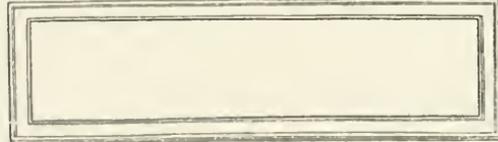
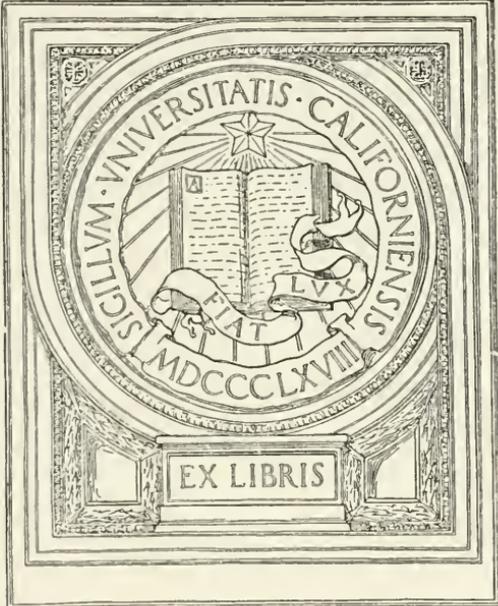




UNIVERSITY OF CALIFORNIA  
AT LOS ANGELES







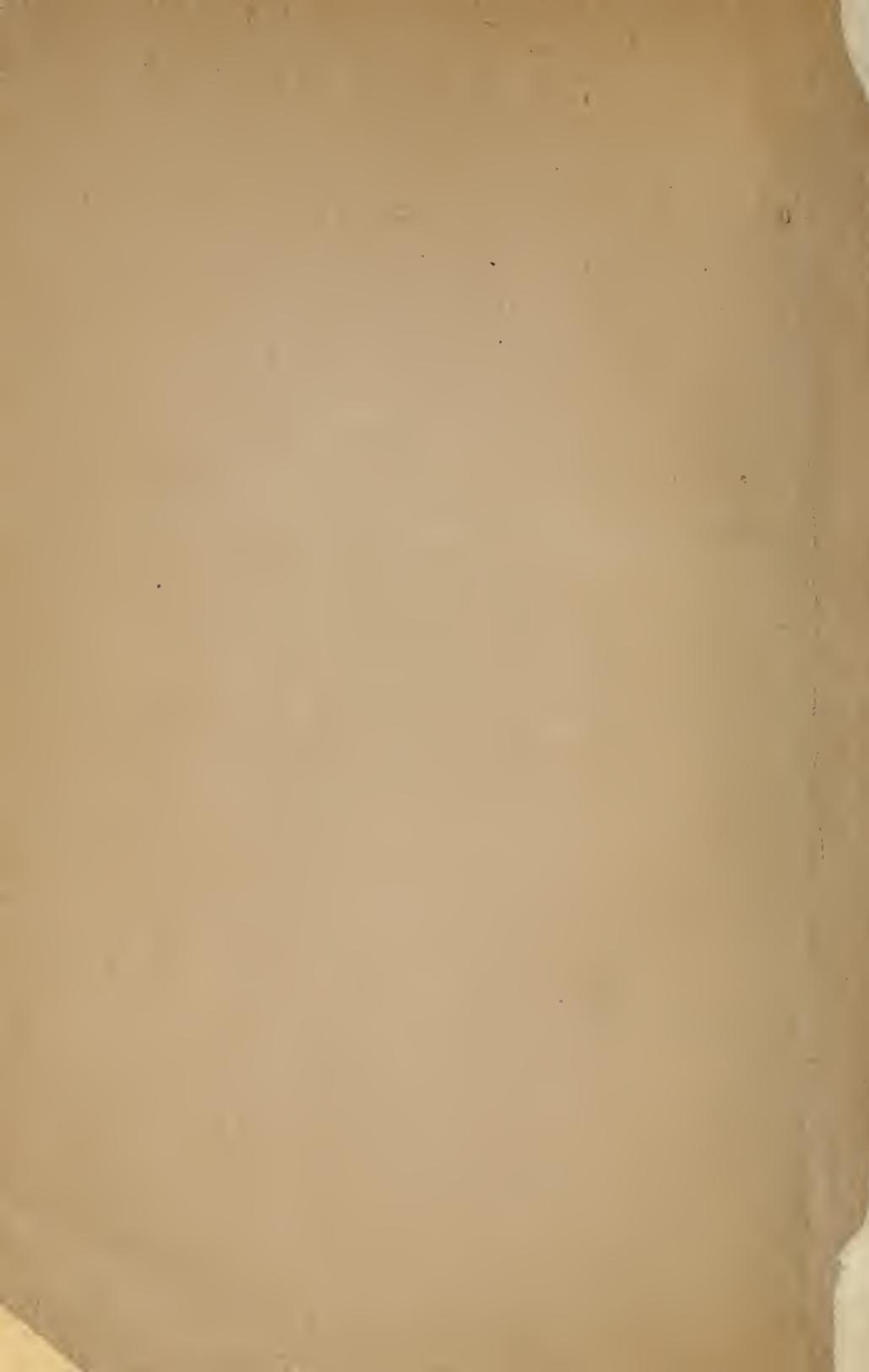
BLOUNT COLLEGE  
AND THE  
UNIVERSITY OF TENNESSEE.

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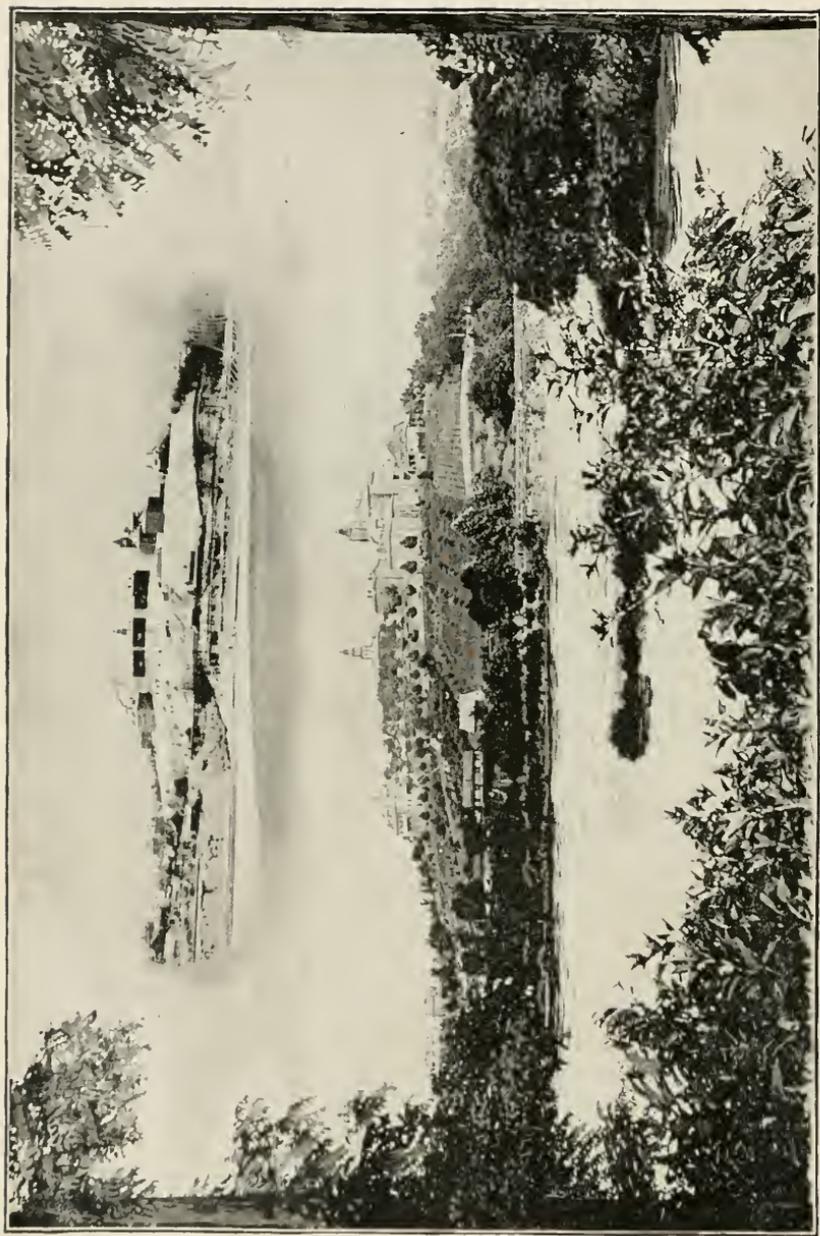
AN HISTORICAL ADDRESS

—BY—

EDWARD T. SANFORD, A. M.







VIEW OF THE UNIVERSITY, 1893.

BLOUNT COLLEGE  
.. AND THE ..  
UNIVERSITY OF TENNESSEE.

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AN HISTORICAL ADDRESS

DELIVERED BEFORE THE

Alumni Association and Members of the University  
of Tennessee,

By EDWARD T. SANFORD, A. M.

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JUNE 12th, 1894.



PUBLISHED BY THE UNIVERSITY.

UNIVERSITY OF TENNESSEE  
KNOXVILLE, TENN.



Compliments of

~~Sent by request of~~

HON. CHAS. W. DABNEY, Jr.,

Assistant Secretary of Agriculture.

(President University of Tennessee, 1887-'94.)

AMERICAN  
MUSEUM OF NATURAL HISTORY

## Blount College and the University of Tennessee.

WITH this present year, the University of Tennessee, whose existence, under her maiden name of Blount College, dates from September 10th, 1794, rounds out the span of her first one hundred years.

Nature has no counterpart to that arbitrary division of infinite time which man denominates a century. Orthodox natural science, scorning the poetic fancy of the myths and traditional lore which would tell us that with each recurring one hundred years the Phoenix is born again and the century-plant blooms anew, records, among all her duly authenticated phenomena, none whose cycle is a century. Nevertheless, man has made the century the yard-stick with which he measures history, and has, by an immemorial and worthy custom, set apart centennial anniversaries as historical resting places and occasions of solemn and reflective ceremonial, upon which, in pleasant reminiscence and hopeful augury, to recite the story of the past and read the promise of the future.

The University whose days have thus lengthened into five score years is a venerable and historic institution, and one of the few pioneer institutions that yet survive within the borders of our State.

If, it is true, we compare its life of one hundred years with the ages of finite time recorded in human history, and the countless unrecorded ages of infinite time that lie beyond those vague and measureless wastes, over which, to use the words of Lowell, fancy flutters "like a butterfly blown out to sea, and finds no foothold," this closing century will seem but as the single ticking of a clock, that in the same instant hath both beginning and ending.

Nor is our University ancient in days when compared

with the yet more ancient and venerable institutions of learning in Europe and this country.

The Universities of Paris and Bologna were celebrated as ancient schools centuries before America was discovered: the classic Universities of England, Oxford, which received the fostering care of Alfred the Great, and Cambridge, its scarce younger sister, begin their histories with the dawn of English civilization: and are rich with memories and inspiration of that which has been best and highest in that civilization; while among the older Universities of America, illustrious in name and glorious in achievements, Harvard has already passed the two hundred and fifty-seventh mile stone in her history, Yale dates her records from the birth of the eighteenth century, and Princeton, to whom Tennesseans owe so much, is of scarce less ancient origin.

Although, in contrast with these older academies the University of Tennessee seems but in the first flush of adolescent vigor, nevertheless, to us who live in a civilization that is comparatively new; in a land that hath not the historic associations of ivy-mantled castles, ruined battlements and the dim fretted vaults of ancient cathedrals; in sight, as we are to-day, of a river down whose placid bosom Indian war canoes have stealthily glided almost within the memory of living man; surrounded by wooded hillsides in which painted savages have lurked on death-dealing mission, even since this century began; an institution well deserves to be termed historic and venerable, whose foundation antedates by two years the establishment of our State government, and whose early history, inseparably linked with that of the infant Commonwealth and entwined with memories of its illustrious pioneers, brings us, when we read its records, into closer touch with the inspiring spirit of those brave days.

There is, I believe, nothing more conducive to good citizenship, more stimulating to patriotic love of country

and a high sense of civic duty, and more inspiring to true ambition, than the study of that history which teaches us what manner of men our forefathers were ; in what high enterprises they engaged ; what they suffered, dared and achieved ; and what was their rugged virtue and strength of character.

Our present civilization must of necessity incur the danger that inevitably shadows all advancing civilizations, that with the growth of luxurious arts, tending to develop the graces and refinements of character, there is a constant and imperceptible tendency to lose the stronger, rougher virtues developed in pioneer times ; and in these days of our republic, when there are upon every hand omens which can but make the thoughtful citizen tremble, when, in the not distant future, the "irrepressible conflicts" which we daily seek to postpone, can be postponed no longer, and "the times that try men's souls" shall come again, it will be well for our land, and will make certain a happy termination of our dangers, if, in those days, the citizens who will have to solve those fearful problems and meet those dangers face to face, shall be quickened by those same pioneer virtues of fearless determination, rugged honesty, and unquenchable love of liberty, which inspired the early settlers of this country so valorously to fight the good fight.

That distinguished historian and erudite scholar, Judge John Haywood, has written, in his history of our State, that : "In viewing the first settlements of Tennessee, and those who were the principal actors in the establishment of them ; in contemplating the obstacles opposed to their efforts, and the difficulties which were encountered in surmounting them ; in noticing the expedients resorted to for the accomplishment of their purposes, (there) will also be evinced an important truth that men, educated in poverty and almost in ignorance of literature of any sort, are yet capable of great achievements and of actions the most highly conducive to the

prosperity and character of the nation to which they belong.”

That the achievements of these men were great, our present civilization bears witness; that they were, in the main, without literary education, is true; but neither must it be forgotten, on the other hand, that John Sevier, William Blount and William Cocke, and, in fact, all the great pioneer leaders, except James Robertson, were men of excellent education and considerable polish, Governor Blount especially being one of the most courtly and cultivated gentlemen in the entire South; and that the main body of the pioneers had received at least the elementary education given in the log-house country schools in the lands east of the Alleghanies, whence they had come.

Thus, Theodore Roosevelt, in his brilliant book on “The Winning of the West,” invaluable to the student of our pioneer history, bears testimony to the fact that in examining “numerous original drafts of petitions and the like, signed by hundreds of the original settlers of Tennessee and Kentucky,” he was “struck by the small proportion—not much over three or four per cent. at the outside—of men who made their mark instead of signing.”<sup>1</sup>

The pioneers, let me repeat, while, in the main, not cultured, were not, as a rule, illiterate.

It was in 1763 that King George III. of England, in order to allow the “savages to enjoy their deserts in quiet lest the peltry trade should decrease,” endeavored to arrest the tide of civilization advancing irresistibly westward from the Atlantic seaboard, by a Royal proclamation that forbade the provincial governors to grant lands or individuals to purchase lands from the Indians upon any territory lying west of the sources of the rivers

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1. The Winning of the West; by Theodore Roosevelt; vol. 1, p. 180, note.

flowing into the Atlantic; but vain was his proclamation as that royal mandate by which his predecessor, King Canute, had sought to stop the advancing tide of ocean. For overruling Destiny had decreed that "Westward the course of empire" should take "its way," and that the history of the American people, for the first century of their national life, should be, in the main, the history of ceaseless and ever advancing western migration. And so it has come to pass that the royal proclamation bids fair to live in history chiefly because it called forth the eloquent protest of Edward Burke in his oration on Conciliation with America.<sup>2</sup>

And when, in the latter part of the eighteenth century, in the period of the Revolution, the great turbid wave of civilization swept westward over the crest of the Alleghanies down into the beautiful valleys of Southwestern Virginia and Eastern Tennessee, it had, with other admixtures, one predominating and salty element that gave it savor, the Scotch-Irish Presbyterians; as sturdy, upright, God-fearing and intelligent a race of men as history has ever known, if, withal, a little inclined to narrowness, and who deserve, if any people do, to be termed "the salt of the earth." These men it was who constituted the dominant and principal element, the very bone and sinew, of the body of settlers and home seekers who came into these mountain valleys in search of permanent abiding places, after the roving hunters and trappers who had preceded them had passed restlessly onward into other forests lying yet further westward.

Let me quote Roosevelt: "The backwoodsmen were Americans by birth and parentage, and of mixed race,

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2. The proclamation was dated Oct. 7, 1763. See article by Charles C. Royce on "The Cherokee Nations of Indians," in annual report of the Bureau of Ethnology, 1883-4, at p. 149; also article by Frederick J. Turner on "The Significance of the Frontier in American History," in the annual Report of the American Historical Association for 1893, at pp. 202 and 224; together with references given in said articles.

but the dominant strain in their blood was that of the Presbyterian Irish—the Scotch-Irish as they were called. Full credit has been awarded the Roundhead and the Cavalier for their leadership in our history ; nor have we been altogether blind to the deeds of the Hollander and the Huguenot ; but it is doubtful if we have wholly realized the importance of the part played by that stern and virile people, the Irish whose preachers taught the creed of Knox and Calvin. These Irish representatives of the Covenanters were in the west almost what the Puritans were in the northeast, and more than the Cavaliers were in the south. Mingled with the descendants of many other races, they nevertheless formed the kernel of the distinctive and intensely American stock who were the pioneers of our people in their march westward, the vanguard of the army of fighting settlers, who with axe and rifle won their way from the Alleghanies to the Rio Grande and Pacific.”<sup>3</sup>

And with these men came their preachers ; not overly tolerant, perhaps, or liberal in opinion, and fond of preaching what a contemporaneous writer terms “ very judicious and alarming ” discourses ; but resolute, high-minded, heroic men, who shared the labors and perils of the settlers, “ tilled their fields, rifle in hand, and fought the Indians valorously,” feeling, as has been said, “ that they were dispossessing the Canaanites, and were thus working the Lord’s will in preparing the land for a race which they believed was more truly His chosen people than was the nation which Joshua led across the Jordan.”

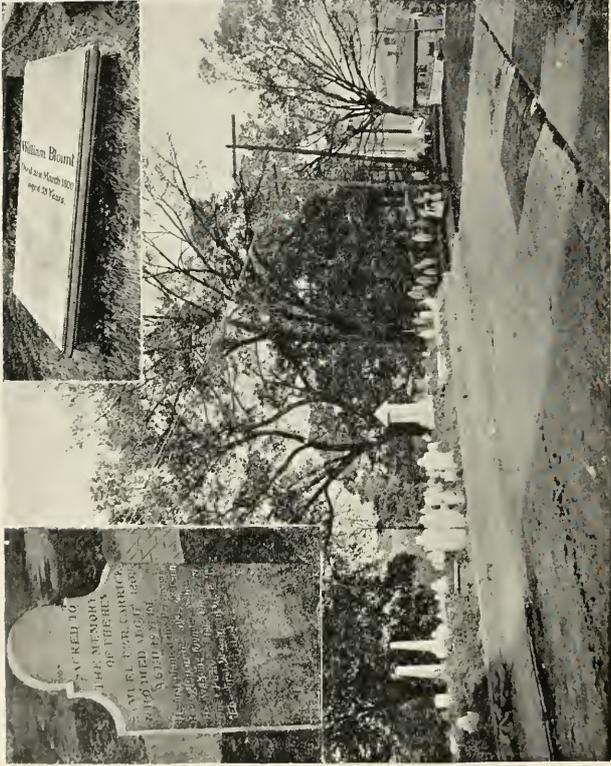
They feared God and kept their powder dry.

These men, when they had come to the western settlements, had brought with them their rifles and axes across their saddle bows, and their Bibles and spelling books in their saddle pockets ; for they had diligently read their Bibles and they had accepted and practiced as a part of their religion, with that same fervid intensity

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3. Winning of the West ; vol. 1, p. 102.





GRAVESTONE OF REV. SAMUEL CARRICK. GRAVEYARD OF FIRST PRESBYTERIAN CHURCH, GOV. WILLIAM BLOUNT. KNOXVILLE.

with which they performed all their religious duties, the words of the Wise Man: "Take fast hold of instruction; let her not go; for she is thy life." And so it came to pass that wherever these men went they established a church, and at the same time they built hard by a school house.

And so it is that history, in its imperishable records, must note the fact that the four prominent educators of pioneer times in Tennessee, the Reverends Samuel Doak, Thomas B. Craighead, Hezekiah Balch and Samuel Carrick, were all Presbyterian ministers, of Scotch-Irish descent, and all but one, to the honor of Princeton be it said, having been students at that college.<sup>4</sup>

The first and greatest of these valiant and worthy pastors, Samuel Doak, established near Jonesboro, in the year 1777, a Presbyterian church, afterwards known as "Salem Church" and an academy of learning, afterwards known as "Washington College," which are said to have been the first church and first institution of learning established west of the crest of the Alleghanies.<sup>5</sup> The last named, Samuel Carrick, a scholarly and ardent young Pennsylvanian, who had settled in Tennessee in 1788, was the first pastor of the First Presbyterian Church of this city, and the first President of Blount College.

The early interest displayed in Tennessee in educational matters is the more noteworthy when contrasted with the fact that North Carolina, of whose territory

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4. The one exception was Samuel Carrick, who was trained at Augusta Academy, Virginia, now known as Washington and Lee College, which Doak also attended for a time. See the Goodspeed Publishing Company's History of Tennessee, p. 414.

5. Address of John Allison before the Tennessee Press Association, on "East Tennessee a Hundred Years Ago," p. 8. Monette calls Doak's Academy "the first literary institution established in the great Mississippi valley." Quoted in James Phelan's History of Tennessee, p. 233.

Tennessee was a part until the year 1790, was, before the Revolution, in this respect, one of the most backward of all the American colonies.

We may surmise that its colonial government, which was always, I believe, of a pronounced Tory and reactionary character, had some sympathy with the jealous fears of popular education expressed in the year 1671 by Sir William Berkely, the Royal Governor of Virginia, in the words: "I thank God there are no free schools, nor printing; and I hope we shall not have these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them and libels against the best government. God keep us from both."

The Tennessee mountaineers shared not, however, in these views,<sup>6</sup> their feeling being rather expressed in the clause proposed, it is said, by Samuel Doak, at the convention held at Jonesboro, in 1784, to adopt a Constitution for the revolutionary government of Franklin, which not only declared that "all kinds of useful learning shall be encouraged by the commonwealth," but specifically provided for the erection, near the center of the State, of a university, to be endowed by an appropriation of land and supported by public taxation, and also contemplated, at a subsequent day, public grammar schools in each county.<sup>7</sup>

But although the spirit expressed in this clause did not then find permanent expression,<sup>8</sup> and although the

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6. Nor did the people of North Carolina themselves, as shown by their prompt and effective legislation, enacted after the Revolution, in behalf of popular and higher education, including the Act establishing the University of North Carolina, at which so many distinguished sons of Tennessee have been educated. See the Goodspeed History of Tennessee, p. 414.

7. Goodspeed History of Tennessee, p. 415.

8. The proposed constitution was rejected by the convention, and a constitution adopted closely modelled after that of North Carolina. See Phelau's History of Tennessee, p. 85.

independent little government of Franklin, scarcely large enough to be termed a ship of State, was unable, even with John Sevier at the helm, to weather the storms of opposition that beat upon her, and foundered after four years of tempestuous cruising, nevertheless the idea thus expressed by Doak, that learning is an excellent thing, and that education is the true corner stone of the State, still survived, and was one of the first to find expression after the Commonwealth had established its independent existence.

In the year 1790, North Carolina, for the second time, ceded to the United States the area now comprising the State of Tennessee, and the cession having been accepted, the United States soon thereafter created a territorial government embracing the ceded district, with the imposing name of the "Territory of the United States of America South of the River Ohio," and George Washington, then President of the United States, appointed as the Territorial Governor that polished gentleman and capable statesman, William Blount.

In the fall of 1794, two years after Colonel James White, the original proprietor and worthy founder of Knoxville, whose character is said to have won for him the cognomen of "the just," had laid off the sixty-four lots comprising the original town, the Territorial Assembly met in its first regular session at Knoxville, the session commencing, as the clerk has recorded, with "a suitable and well-adapted prayer by the Rev. Mr. Carrick."<sup>9</sup>

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9. Annals of Tennessee, by J. G. M. Ramsey, p. 624. There had been a preliminary session of the House of Representatives, begun, at Knoxville, on the 4th Monday in Feb., 1794, at which ten persons were selected, from whom Congress subsequently chose five as the Legislative Council, or upper house, but no legislation was enacted, and the session begun at Knoxville on Aug. 25th, 1794, was the first regular session of both houses of the Assembly. See Ramsey's Annals, pp. 621-3.

The members of that assembly were the pick and flower of the community, for people then still retained the old-fashioned idea, sounding so absurdly in these enlightened days, that the people should select their best and fittest men to represent them in their Legislative bodies.

These representatives, as did their constituents, knew, with a realizing sense, the value of education, and knew that in no community is it of such vital necessity as in a Republic, a government that can not be safely or permanently built except upon the corner stone of universal education.

It may perchance also be that these legislators remembered that North Carolina in ceding Tennessee to the United States had stipulated that the inhabitants of the ceded territory should "enjoy all the privileges, benefits and advantages set forth" in the ordinance of 1787, for the government of the Northwest Territory;<sup>10</sup> one of the articles of compact declared in this celebrated ordinance being in these words: "Religion, Morality and Knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."<sup>11</sup> This, therefore, is the fundamental law of our land.

And so it was that on September 3rd, the territorial legislature, having made provisions for its judicial system and for the public revenue, granted a charter to Greeneville College, whose first President was the Reverend Hezekiah Balch, and whose centennial anniversary, under its present name of Greeneville and Tusculum College, was celebrated but a few weeks since.

And hence it was that on the next day, William Cocke,

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10. Deed of Session, cl. 4., printed in Ben Perley Poore's Charters and Constitutions, part 2, p. 1666; also in Haywood and Cobb's Statute Laws of the State of Tennessee, vol. 2, p. 9.

11. The Northwest Ordinance, Art. III., Poore's Charters and Constitutions, part I, p. 431.

representative from Hawkins County, one of the strongest men developed in those sturdy times, a man of great natural ability, and who, as orator, has had but few peers in the history of Tennessee, presented, as the record shows, "a Bill for the establishment of ————College in the vicinity of Knoxville,"<sup>12</sup> the blank being subsequently right worthily filled with the name of the honored Governor, and on September 10th; 1794, the fifteenth day of the first regular session of the first Territorial Assembly, the bill chartering our university became a law, baptising her with the name of the "President and Trustees of Blount College in the vicinity of Knoxville."<sup>13</sup>

By the preamble of its charter the College was dedicated to the promotion of "the happiness of the people at large, and especially of the rising generation" as a seminary of education where youth might be "habituated to an amiable, moral and virtuous conduct, and accurately instructed in the various branches of useful science, and in the principles of the ancient and modern languages," and was made a non-denominational institution by the provision that the Trustees "shall take effectual care that students of all denominations may and shall be admitted to the equal advantages of a liberal education, and to the emoluments and honors of the College, and that they shall receive a like fair, generous and equal treatment during their residence therein," a provision which makes Blount College the first strictly non-denominational college established under the jurisdiction of the United States, according to the authority of Col. Moses White, the learned and scholarly historian of our University, whose sketch of the "Early History of the University of Tennessee" is the over-flowing

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12. Ramsey's Annals of Tennessee, p. 623.

13. Chapter XVIII, of the Acts of the First Session of the General Assembly of the Territory of the United States of America South of the River Ohio, p. 89. The charter is printed in full in Appendix A hereto.

well-spring of information, from which all later searchers must drink. <sup>14</sup>

That the legislature intended the establishment of this college to be no idle ceremony, but regarded the step which they were taking as fraught with highest significance to the young Commonwealth, is demonstrated by the character and standing of the seventeen men designated in the charter as Trustees: first, the Rev. Samuel Carrick as President, "liberal, tolerant and refined," than whom none was more scholarly, none more worthy; then His Excellency, William Blount, Governor of the Territory, afterwards one of the first two United States Senators from Tennessee; three Honorables who were respectively the Secretary of the Territory and its two Judges; General John Sevier, the handsomest man in the Territory, dashing Indian fighter and popular hero, first Governor of Tennessee, first representative in Congress from the Mississippi valley, and first in the hearts and memories of every East Tennessean; Colonel James White,<sup>1</sup> (after which name we must write an interrogation point, for there were two Colonels of that name, and history leaves it doubtful whether our Trustee was the James White who founded Knoxville, or James White, the representative from Davidson County, although our University historian is firmly of the former opinion); another Colonel who was a representative in the Territorial Assembly; then Colonel William Cocke, he of ever grateful memory, who had introduced the bill for the establishment of the Collegè, and was afterwards Blount's colleague in the Senate of the United States; and nine other gentlemen

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14. I have endeavored in every instance to give credit to Col. White for information gleaned from his pages, but may in some instances have forgotten the quotation marks, and therefore state generally that whenever any particularly interesting bit of information is given concerning the early days of our University it may be known to be the result of his researches.

designated in the charter as "Esquires," then without official stations, yet bearing names no less honored in the community than those of their predecessors; among whom were Archibald Roane and Willie Blount, both subsequent Governors of the State, Charles McClung, a prominent Knoxville pioneer, who, according to Colonel W. A. Henderson, suggested the design for our Great Seal of State, and George Roulstone eserving of immortality as proprietor and editor of the first newspaper published in Tennessee, which appeared in 1791, and was called "The Knoxville Gazette," although it then happened to be published at Rogersville. Four of these Trustees were subsequently United States Senators from Tennessee, and three Governors of the State.

The College began operations soon thereafter in a two-story wooden building erected by subscription, and which, as our historian tells us, stood near the northwest corner of the square upon which the First Baptist Church of this city now stands, about where Yeager's drug store is now located, the entire square having been donated to the College by Col. James White, the founder of the town.<sup>15</sup>

And there for many faithful years stood this modest edifice, as a light house of learning standing on the very shores of civilization.

The entire population of the Territory at that time, both free and slave, was less than the present population of our trio of Knoxville cities. Knoxville, though the capital of the Territory, was on the very outskirts of the settlement, with a vast waste of wilderness separating her from the Cumberland settlements, her nearest neighbors on the West. The town was then little more than

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15. Early History of the University of Tennessee: Address delivered before the Alumni Association by Moses White, Esq., in 1879, p. 9.

a cluster of houses,<sup>16</sup> surrounding the loop-holed and palisaded block house, a fair type of those places of refuge from the Indians, which have played so important a part in the history of our civilization, as it has advanced on its westward way.

On all sides, were “endless leagues on leagues” of forests, haunted with wolves, bears and “the hawk-eyed and wolf-hearted Indian,” and interspersed only here and there with an occasional clearing, or a village surrounding a block-house.

It was only three years before the founding of the College that Governor Blount had held at Knoxville his famous treaty with the Cherokee Indians, at which, on an oak shaded knoll on the banks of the Holston, at the foot of what is now called Crozier street, the forty-one chiefs who were in attendance, were, in turn, with solemn pomp and ceremonial, presented by the master of ceremonies to the Governor, arrayed in resplendent uniform, and as tradition relates, seated upon a dais, and at which the polished Governor succeeded, through the dazzling effect of his ceremonial display, or otherwise, in inducing the Indians to agree to perpetual peace, and to give up large bodies of their lands for a very trifling consideration, the agreement of peace, however, being apparently entered into by the Cherokees with the same facility with which it was almost immediately thereafter broken—by both sides.

It had been in the very year before the College was established that the Rev. Mr. Carrick, its first President, had been, at the imperious call of duty, forced to leave the body of his beloved wife to be buried by a faithful servant and neighborhood women, while he, with the other able bodied citizens of Knoxville, shouldered his rifle and marched to the top of the range of hills upon

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16. In 1796, Knoxville contained about forty houses, with a population of 200. Sketch of Knoxville, in W. C. Crozier's Knoxville City Directory, 1891-'92, p. 5.





Joseph Estabrook, A.M., Fifth President  
East Tennessee University, 1840-1850  
East Tennessee College, 1834-40.



Rev. Charles Coffin, D.D., Third President  
East Tennessee College, 1827-32

which the Knoxville Colored College now stands, to intercept the threatened attack of over a thousand Creeks and Cherokees, under the leadership of John Watts, the half breed Cherokee Chief, who were only turned aside a few miles from the city by approaching daylight, having been delayed by a family named Cavet, who, with unreasonable obstinacy, objected to being scalped, and in a spirit of captious and pugnacious opposition detained the Indians longer than had been expected. To this, coupled with an amiable discussion that arose among the Indians as to whether or not they should massacre all the inhabitants of Knoxville or only the men, which was somewhat protracted, may be attributed the saving of the town, as its fighting men numbered only forty, and the oldest two of these had been left to guard the women and children in the block-house.<sup>17</sup>

It was at the same session of the Territorial Assembly at which Blount College was chartered, that Mr. Kelley and Mr. Beard, the representatives from Knox county, were granted "leave of absence to go on a scout against the Indians;" and at the close of the session Governor Blount, at the request of the members from the Mero District, ordered a guard of soldiers to accompany them across the Cumberland mountains.<sup>18</sup>

The citizens of Knoxville and the surrounding country at that time, were practically frontiersmen; strong, sinewy, home-spun, God-fearing men, and mainly, except a few traders at Knoxville, engaged in agriculture and hunting.

It is probable that few youths found time in these days for an elaborate schooling or academic training, being only able to give to their education the intervals snatched from agricultural labors, although as we learn

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17. White's Early History of the University of Tennessee, p. 9. Sketch in Crozier's City Directory, 1891-'92, p. 34.

18. Ramsey's Annals of Tennessee, pp. 626 and 633.

from J. W. M. Brazeale, in his curious and moralizing book, "Life as it Is," it was not long before the manners and customs of the people underwent "a considerable change and many of them began to think of becoming a polished and fashionable people. School houses were erected all over the country, in which the children were instructed, not only in the various branches of literature, but, it was the business of school-teachers, at that day, to instruct the youth in the rules of politeness and morality, as well as those of literature and science; and it was rare to meet with a boy of thirteen years of age, who would not make a more genteel bow than is now made by our members of Congress. Children at that day were not permitted to join in the conversation of grown-up people, but were taught to be listeners instead of talkers, and educated to respect hoary hairs, and treat the aged with politeness and veneration."<sup>19</sup>

We can easily fancy that in these country schools, the emphasis was not laid too heavily on the instruction in literature and science, and that this boy of thirteen would probably cut a pretty poor figure in the final examinations of our school children to-day; but yet, after all, there is something in the old time education in politeness, and the stern drill in the rudiments of education, which some old fashioned people yet think to be almost as good as a modern smattering in the sciences.

We must also remember that while Blount College had been liberally endowed by the Territorial Legislature with Trustees, it had been endowed with nothing else, the scanty revenues of the Commonwealth being probably needed for the expenses of the frugal government and more especially for purposes of common defence against the Indians, so that when Blount College and Greeneville College were chartered, the essential feature of Doak's Franklin plan for a university, namely: that it

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19. "Life as it Is; or Matters and Things in General." By J. W. M. Brazeale, Knoxville (1842), p. 114.

should be supported by public taxation, was omitted. Blount College, neither in its beginning, nor in its subsequent history, at any time, received any grant from the public revenues or any support from the government;<sup>20</sup> nor did each family contribute either one peck of corn or twelve pence to its support as the citizens of New England taxed themselves to support Harvard College; it was always dependent for its support upon its tuition fees and voluntary contributions.

So that, although, as our historian has gleaned from the earliest records of Blount College, the little "College Book of Students and Accounts," made of plain, unglazed paper, covered with a sheet of coarse wall paper, which dates from 1804, the price of tuition in Blount College was only \$8.00 per session of five months, and that of boarding only \$25.00 per session,<sup>21</sup> it is probable that in a community with but little accumulated wealth, even this modest fee was sufficient to prevent the College from being attended by any except the favored sons of the wealthier classes living in Knoxville and its immediate vicinity; for we must not forget that the rival institutions of upper East Tennessee, Greeneville College and Washington College, by which latter name Doak's Academy was chartered by the State of Tennessee in 1795, both of which were located in the older and then more thickly settled portion of the State, drew unto themselves nearly all the college students from that section, and were much more largely attended than Blount College.

We must not therefore fall into the error of regarding

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20. Thus, in 1801, the Senate of Tennessee, in answer to a petition from the University of North Carolina, adopted a resolution, in which it is said: "Tennessee, in her present condition and infant state, has not arrived at the period when her revenues will even authorize a loan to patronize the seminaries of learning already established within the limits of her own state." Quoted in Phelan's History of Tennessee, p. 234.

21. Moses White's Early History of the University of Tennessee, p. 13.

Blount College as an institution giving a general education to the mass of the people ; it was on the contrary, a classical Academy for the sons of the comparatively wealthy, giving them a classical training and acquaintance with the polite and liberal arts.

It is a noteworthy fact that our early Legislators, while they thus made abundant provision for the higher learning, failed to provide at the same time for that common and general schooling which is the only sure foundation upon which the higher education can be built. Not until many years after Blount College was established was there any public school system whatever in Tennessee, and none that was efficient until 1873, and even with the system that then existed, the college and its successors had no organic or official connection, and from it derived no support. Our Legislators began their system of public education at the top, instead of first laying the sure foundations of common school education.

It was this lack of an efficient common school system that up to the civil war was the greatest obstacle in the way of the more wide spread influence of the various colleges of the State, and caused them, one and all, to be, more than they should have been, institutions for the education solely of the more favored portion of the community. It is a fact that has often been remarked, that here lies, in the main, the broad distinction between education in the North and in the South prior to the war ; for although in New England, Harvard College had been founded before public schools were established, yet the defect was almost immediately remedied, and only eleven years afterwards, Massachusetts laid the foundation of an efficient system of public schools which have supported the College from that good day until this ; and so in the other New England States ; and so generally throughout the North. In the South it has been otherwise.

The explanation commonly given for this is that the

slave-holding system, by which the education of a large class of the population was rendered impolitic and forbidden, and the education of the poorer whites thought unnecessary, naturally confined education largely to the aristocratic and slave-owning classes, and made these ruling classes feel it unnecessary to tax themselves for the education of the rest of the community. However, there is much weight to be attached to another explanation:<sup>22</sup> that the system of townships, as independent municipalities, existing in most of the Northern and especially in the New England States, by furnishing local organizations through which public schools could be supported, and the absence of such municipalities in the South, with the more scattered character of its population, had much also to do with the matter. But whatever the explanation may be, the fact exists, and no one can fully understand the history of higher education in Tennessee who does not understand and remember this fact. The frequent apparent failure of the higher education in Tennessee to accomplish its ideals, has been largely due to the lack of common schools affording the necessary primary education and the source whence the Colleges might draw their pupils.

The students of Blount College, coming therefore mainly from the leisure class, who desired an acquaintance with the polite arts, it was but natural that its curriculum should have been the traditional training of the old fashioned classical seminary.

We are confirmed in this surmise by the glimpse that is given us in the college record of the studies pursued by William E. Parker, who graduated October 18th, 1806, the first and only graduate of Blount College, who

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22. Given me by my scholarly friend, J. W. Caldwell, Esq., with whom I have often counselled in the preparation of this address, and to whom I am indebted for much kindly assistance and many valuable suggestions.

is recorded by President Carrick as having been examined and approved in Virgil, Rhetoric, Horace, Logic, Geography, Greek Testament, Lucien, Mathematics, Ethics and Natural Philosophy.<sup>23</sup>

The Rev. Dr. Thomas W. Humes, in his address delivered at the semi-centennial Anniversary of the settlement of Knoxville, has also preserved for us a picture of the commencement exercises of Blount College, which gives us an idea of their Academic nature. They took place just east of the barracks, that is, on the present court house square, just about where Governor Sevier's monument now stands, in an unenclosed space, which was, as he tells us, preserved cleanly swept by the soldiers, and appropriated to the public exhibitions of the students of the College. "The stage, erected against the wall of the barracks, a room of which was devoted to the use of the students who were to be speakers of the day; the citizens passing by stately sentinels into the open area, where seats were preserved for their accommodation; the silent throng standing with uncovered heads in prayer; the voice of the Reverend President commanding, in scholastic phrase, the appearance of the youthful orator, and the bursts of martial music and the firing of cannon, with which the intervals of juvenile display were enlivened, all constitute," now as then, "a picture of early days rich to us in novelty."<sup>24</sup>

That this classic Academy, however, did indispensable and precious work in training the minds of the rising generation, is attested by the list of its students, among which appear the names, honored in East Tennessee, of McClung, Hyndman, Rodgers, Campbell, Reese and others, one of the first names appearing in the record book being that of C. C. Clay, whom President Carrick noted as giving evidence of "good genius, orderly and

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23. White's Early History of the University of Tennessee, p. 17.

24. Quoted in White's Early History of the University of Tennessee, p. 13.

diligent," whence we are not surprised to learn that he was afterwards Governor of Alabama and Senator in Congress from that State. <sup>25</sup>

But let me not pass from the history of Blount College without noting the fact that her record book shows that for some time at least, young women were admitted as students, apparently upon equal terms with the young men, and as a matter of course, without any particular to-do being made thereat; and for the benefit of the future Alumnae of the University, be it noted that the first feminine names are those of Polly McClung, Barbara Blount, Jennie Armstrong and Mattie and Kittie Kain. <sup>26</sup> Of these, Barbara Blount was the charming daughter of the courtly Governor, who had lived for sometime after he came to Knoxville upon a knoll between the University and the river, which must have been where the house of Dr. Dabney now stands. In honor of his daughter the knoll was named "Barbara Hill," the name being afterwards given to the entire College Hill. It may also be read that the marks of merit used to indicate the standing of the girls were the words: "attentive," "diligent" and "ingenious," and that while some of the other girls attained unto one or two of these marks of distinction, the charming Barbara alone gained all the marks of merit, and was recorded as not only "attentive," but also "diligent," and also "ingenious," so that it is no wonder, as our historian says, that she afterwards captured Major General Gaines of the United States army.

And so passed the days of Blount College. It was not a great institution; it was not, perhaps, what we would to-day call a university. But we may be certain that the Rev. Mr. Carrick labored well and faithfully, and that even if he did not teach these young men and young women much science, he instructed them well in the

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25. Early History of the University of Tennessee, p. 14.

26. Early History of the University of Tennessee, p. 14.

classics, and inspired them with a love of learning and an ideal of lofty character. Blount College was an independent, though modest, academy of learning, in which the lamp of scholarship and culture was kept always brightly burning, shedding its beneficent rays over many a young and ambitious student; and so it should be remembered.

And now I come to a chapter of our history, which, as a son of Tennessee, I would need not be opened; a chapter, adding nothing to the fame of our State, in which is written the story of her dealings with our University and other of the institutions of learning within her borders; a chapter, which, unfortunately, cannot be omitted from their history.

I recite this story, not in a spirit of reproach, but of regret, seeking only to find and declare the truth, and, as one loving his State, believing that when she shall know the truth, she will hasten to repair whatever of wrong may have been committed.

Prior to 1806, there had been pending for several years a legislative controversy between the United States and Tennessee, as to the ownership of the vast domain of vacant lands within the borders of the State.

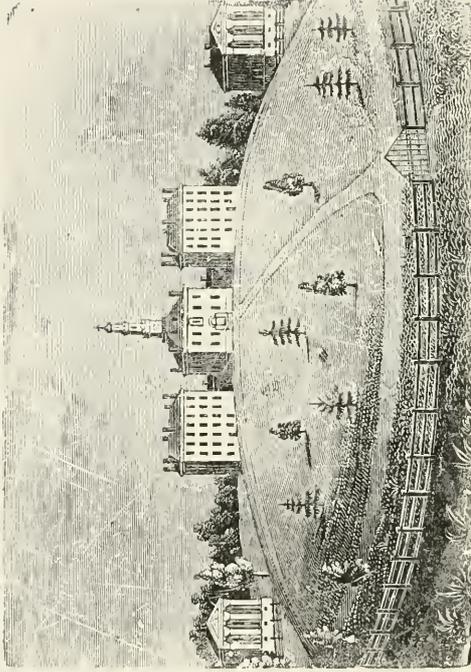
In the light of to-day we would have no hesitation in saying that the United States had decidedly the better argument. Nevertheless, in 1806, Congress, no doubt largely in "a spirit of compromise," but perhaps more as "an act of grace," ceded to Tennessee all the right and title of the United States to the lands lying within the State east and north of a certain specified line, running across the western part of the State, and afterwards known as the Congressional Reservation Line, to take effect upon the release by Tennessee of all claims to the lands lying west and south of this line. <sup>27</sup>

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27. Act of Congress, passed April 18th, 1806.

An historical note as to this controversy, giving further details





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The State of Tennessee, in the same year, by an Act of Legislature, accepted the provisions of the Act of Congress, and in the following year the cession was duly perfected by a written instrument executed by our Senators and Representatives in Congress, releasing all claims of the State to the lands west and south of the reservation line.

By virtue of this settlement Congress ceded to Tennessee, subject to certain claims reserved under the North Carolina cession, and to the lingering Indian titles, all the title of the United States to a magnificent empire, comprising about the eastern two-thirds of the State, reserving to the United States about the western third.<sup>28</sup>

However, in thus yielding this vast territory, Congress, not unmindful of the solemn covenant "that schools and the means of education shall forever be encouraged," which North Carolina has made a perpetual privilege to be enjoyed by the inhabitants of this soil,<sup>29</sup> and in order to insure its faithful performance after the land should have passed from the United States, had provided, in the Act of 1806, as one of the inseparable conditions of the cession, that Tennessee should set apart within the ceded territory one hundred thousand acres, to be located in one entire tract, on land to which the Indian title had been extinguished, lying within the limits that

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as to its settlement, together with the adjustment of the claims of North Carolina to perfect titles within the State, which was interwoven therewith, will be found in Appendix B.

28. For details as to the area embraced in the Congressional Reservation, the amount of North Carolina claims afterwards satisfied out of the territory east and north of the reservation line, and the extinguishment of the Indian titles, see Appendix B.

29. Notes 10 and 11 *supra*; see also treatise on "Higher Education in Tennessee," by Lucius S. Merriam, p. 23. This work, which is published by the U. S. Bureau of Education as No. 16 in its "Contributions to American Educational History," is a learned and invaluable study, indispensable to the student of the educational history of our State.

had been reserved to the Cherokee Indians by North Carolina in 1783, which should be sold for not less than two dollars an acre, and the proceeds invested for the use of two colleges to be established by the Legislature, one in East and one in West (now Middle) Tennessee; with a like tract for the joint use of academies to be created in each county of the State.<sup>30</sup>

The cession act also contained the further express condition, which afterwards became of deepest significance to the institutions of learning, that the people residing "south of French Broad and Holston and west of Big Pigeon rivers, provided for by the Constitution of the State of Tennessee," should be "secured in their respective rights of occupancy and pre-emption" and receive titles to the land claimed by them "at a price not less than one dollar per acre."

Out of these two conditions, apparently in no wise connected, there at once arose, by reason of a state of affairs existing at the time, as to which, by an unfortunate oversight, Congress had made no express provision, a conflict of interest, dire in its results, between the colleges and academies, on the one hand, and the residents south of the French Broad and Holston on the other.

And here begins a "strange eventful history;" the story of these clashing interests, and the manner in which the State of Tennessee did, or did not, carry into effect the act of Congress; a story which is essential to a clear understanding of the subsequent history, not only of our University, but of higher education throughout the State.

The underlying cause of the trouble was the fact that

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30. The State was also required, in issuing grants, to locate six hundred and forty acres to every six square miles in the territory ceded, where existing claims would allow, to "be appropriated for the use of schools for the instruction of children forever." However, as this provision was on an entirely different basis from that in reference to colleges and academies, no further reference will be made thereto.

the territory designated as that in which the college and academy tracts should be located, was one and the same as that in which there had also been made provision for the rights of occupancy and pre-emption.

The two educational tracts, it will be remembered, were to be located in that specific portion of the ceded territory lying within the lands reserved by North Carolina in 1783 for the Cherokees, to which the Indian title had already been extinguished.

This Cherokee reservation had extended so near to where we are assembled to-day, that I doubt not but that David with his sling might from here have cast a pebble into its bounds; for it had embraced all that expanse of country, unsurpassed in loveliness, which lies spread out, in varied panorama, before the spectator looking southeastwardly from our college campus; extending from the opposite shore of the stately river that rolls at the foot of College Hill, past the wooded hills and fertile valleys, past the beautiful Chilhowee range, to the very cloud-capped crest of the Great Smoky Mountains; stretching northeastwardly to the rushing waters of the Big Pigeon; southwestwardly to the extreme limits of the State.<sup>31</sup>

This, then, was the area in which the college and academy tracts were to be located. It was a rich domain, lying south and east of the French Broad and Tennessee rivers, and extending from the Big Pigeon to the Little

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31. This "reservation," by which North Carolina, in violation of her treaty of 1777 and her act of 1778, attempted to greatly narrow the Indian boundaries, without so much as saying "by your leave," had included, in addition to lands in the western part of North Carolina," the entire southeastern portion of the present State of Tennessee, lying west of the Big Pigeon river, south of the French Broad, and south and east of the Tennessee, from its junction with the French Broad above Knoxville, to the southern boundary of the State. Acts of North Carolina, 1783, ch. 2, sec. 3.

An historical note as to the legislation and treaties of North Carolina. the United States and the government of Franklin in regard to the Indian boundary line, will be found in Appendix C.

Tennessee, containing perhaps eight hundred thousand acres, with many rich lowlands and fertile valleys. At least one-half of its entire acreage was peculiarly well adapted for cultivation, embracing some of the most fertile lands in the State, while the remainder was, in the main, mountain land unsuited for farming, though rich in every mineral wealth.<sup>32</sup>

And now as to the residents in this territory south of French Broad and Holston. How came they in this region? What were their rights of pre-emption and occupancy? and how were these rights acquired?

As early as 1777, by that treaty near the Long Island of the Holston, by which North Carolina had conceded to the Cherokees nearly all that portion of Tennessee lying southwest of Jonesboro, a concession which was confirmed by solemn legislative enactment in the following year, and emphasized, as to this territory, by the "reservation" of 1783, this fair region has been within the limits of the Cherokee hunting ground, in which the whites were forbidden to settle or in any manner intrude.

Nevertheless, unfortunately for the institutions of learning, so fair had been this rich garden, so inviting its valleys, so enticing its prospects, that in spite of treaties and legislative prohibitions and the hundred-fold greater perils from the Indians, its charms had proven an irresistible attraction to an army of settlers, who had invaded this territory, encroaching farther and farther upon the Indians, conquering the soil from them, acre by acre, at the cost of countless privations, often, indeed, of life itself.

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32. This area embraced the greater part of the present county of Blount, most of Sevier, and portions of Loudon, Knox, Jefferson and Cocke counties. It is the section known in our State legislation as the district south of the French Broad and Holston.

The estimate of the proportion of arable lands was given me by Gen. J. C. J. Williams, who is thoroughly acquainted with this section of country.

In vain had the Congress of the Confederation, in 1785, by the treaty at Hopewell, again declared this region to be within the Indian boundaries, and that all settlers should "forfeit the protection of the United States" and be subject to punishment by the Indians. Encouraged by the revolutionary government of Franklin, "whose leaders stood distinctly for the idea of encroachment,"<sup>33</sup> and whose two quasi treaties of Dumplin Creek and Chota Ford, although never recognized by North Carolina, and repudiated by the United States, afforded, perchance, some moral, if not legal, justification for the settlements made on the faith of those treaties before the provisions of the treaty of Hopewell became known, the settlers steadily extended their possessions, moving their habitations ever farther and farther southward, nearer and nearer to the Cherokee towns that lay along the southern banks of the Little Tennessee.

In vain did Congress, in 1788, issue a proclamation forbidding all intrusions upon this territory and enjoining the departure of persons already there. Equally ineffectual were the threats and ravages of the exasperated Indians, who continually complained as the settlements constantly encroached upon their hunting grounds, and took sullen revenge upon these settlers and other whites as well, in marauding attacks and midnight slaughter.

Nor did the stringent provisions against new encroachments contained in the treaty of the Holston, by which, in 1791, Governor Blount succeeded in extinguishing the Indian title to the lands north of Maryville, prove more effective.

Still the boundary was overleaped; still the invasion continued southward, and it was not until the treaty held

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33. Quoted from a valuable paper by Prof. Stephen B. Weeks on "General Joseph Martin and the War of the Revolution in the West," printed in the Annual Report of the American Historical Association for 1893, p. 444.

near Tellico in 1798 that the large number of settlers who had taken up lands southwest of Maryville, in the forks of the Tennessee and Little Tennessee rivers, ceased to be within the Cherokee boundaries.<sup>34</sup>

Such was the nature of the settlements south of the French Broad and Holston.

It is not my purpose to-day, however, to pass moral judgment as to the right and the wrong in the conflict between the settlers and the Indians; perhaps this would be impossible, from the lack now of sufficient data upon which to base such judgment. There was undoubtedly much of right, much of wrong, on both sides.

While it is impossible to excuse the constant violations of treaties, yet when I remember that these settlers were, in the main, honest men, seeking homes for themselves and their families, I cannot but feel that the original wrong had been done—a wrong not only to these settlers, but to Civilization—when in deference to a highly technical legal fiction, it had been conceded, in the first instance, that the Indians had gained a title, which others were bound to respect, to vast areas of land outside of their actual habitations and improvements, simply by roving over them in their hunting, fishing and warring expeditions, and that they were entitled to reserve these domains for these purposes, to the exclusion of home-seekers and tillers of the soil—a legal fiction which, in that inevitable conflict between Civilization and Savagery, in which Civilization shall ever prevail, should yield to the claims of those who desire to take up their habitations upon the land, to cultivate and improve it.<sup>35</sup> Hunting grounds must ever give way to homes.

I can well understand that these men felt, as they

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34. See as to these various treaties and enactments, historical note, Appendix C.

35. Since the whites had begun to settle in this section of the country, the Cherokees had had no towns or fixed habitations north of the Little Tennessee river.

gazed upon this fair land from which it was sought to exclude them, that they had, by hasty pens, been cheated out of that which had been their birthright.

But whatever the merits of the struggle between settlers and Indians, certain it is that as to other citizens of the State the settlers had earned a prior right to these lands. Every acre had been "cleared by the axe and held by the rifle," those "two national weapons of the American backwoodsman, in whose use he has never been excelled;" every acre had been bought with drops of blood.

And hence, it was but just and fitting that when those lands were freed from the Indian title, and became subject to lawful disposition, the State, in putting them upon the market, should officially recognize this prior claim and give the settlers that same right of preference which North Carolina had in 1777 given to the actual occupant of the soil in selling her western lands,<sup>36</sup> and which has since been recognized both by Tennessee and the United States in every disposition made of any body of their public lands,<sup>37</sup> the right, in legal parlance, of pre-emption, or literally, of prior purchase, that is, the right of the occupant who has settled upon land before the Government has made it subject to purchase, to be given a first chance to buy it upon the terms prescribed, when it is put upon the market.

So manifestly had the settlers south of the rivers earned, by sweat and blood, a prior claim to the fields which they had cleared, and the cabins which they had

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36. North Carolina Acts of 1777, 2nd sess., chap. I, sec. 16; Scott's Laws, vol. 1, p. 16. See also North Carolina Acts, 1782, ch. 3; Scott's Laws, vol. 1, p. 259.

37. See, as to Tennessee, report of the Select Committee on Ocoee District, October 30, 1837. (House Journal, 1837-8, p. 803.) Thomas H. Benton says, speaking of the land laws of the United States: "The pre-emption system was established, though at first the pre-emption claimant was stigmatized as a trespasser and repulsed as a criminal."

raised and guarded, that it is little wonder it had been provided as one of the fundamental "Declaration of Rights" in the Constitution of 1796, under which Tennessee was admitted into the Union, that they were entitled to the right of pre-emption in the territory which they occupied.<sup>38</sup>

And so it was that in 1806, no disposition having as yet been made of these lands, no title vested in the settlers, no payment made by them to either State or National Government,<sup>39</sup> Congress by that same cession Act, in which it had required the college and academy tracts to be located in the territory south of French Broad and Holston, had also provided that the settlers should be secured in their pre-emption rights and receive titles to their occupant claims, at not less than one dollar an acre.

And now there fell upon the State the double duty of

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38. Tennessee Constitution of 1796, Declaration of Rights, Article XI., sec. 38: "That the people residing south of French Broad and Holston, between the rivers (Little) Tennessee and the Big Pigeon, are entitled to the rights of pre-emption and occupancy in that tract."

North Carolina had previously, in her Act ceding Tennessee to the United States, reserved the right of the General Assembly passing the Act to open an office for the entry of pre-emptions by the people then "residing south of the French Broad, between the rivers (Little) Tennessee and Pigeon," but the Assembly seems to have adjourned without opening the office. (North Carolina Acts, 1789, chap. 3, sec. 1, sub-sec. 10; Scott's Laws, vol. 1, p. 408.)

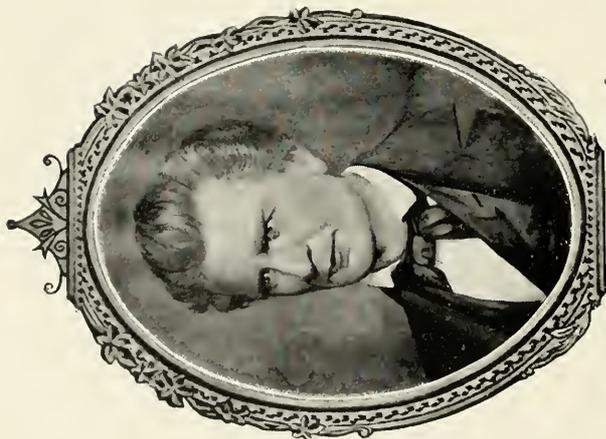
39. There were some instances entirely distinct from the occupant claims, in which persons had paid for and obtained grants from North Carolina for lands lying south of French Broad and Holston, but the Tennessee Legislature made provision for such persons by providing that other grants should issue to them, instead, in other parts of the State. (Acts of 1806, ch. 1, sec. 27; Whitney's Land Laws, p. 131; Scott's Laws, vol. 1, p. 901.)

See historical note, Appendix D, for various Tennessee enactments, from 1799 to 1805, inclusive, in reference to the occupant claims south of the French Broad and Holston.





Rev. George Cook, A.M., Seventh President  
East Tennessee University, 1853-57



Hon. W.B. Reese, LL.D., Sixth President  
East Tennessee University, 1850-53

setting apart within this territory the two educational tracts which were to be sold for not less than two dollars an acre, and the preservation of the pre-emption rights of the occupants at not less than one dollar an acre. The task of the State would have been easy of performance had it not been for the one fact, so disastrous in its results to our institutions of learning, so injurious to the cause of higher education in Tennessee, that, already in 1806, so thickly had this region been settled that it was impossible to lay off two tracts of one hundred thousand acres which should not include lands already occupied, and, in fact, be largely composed of them.<sup>40</sup>

It being thus inexorably demanded by the logic of the situation that the college and academy tracts should be chiefly composed of occupant lands, the question of the price which the State should fix upon them became one of vital importance to the institutions of learning, for on this would mainly depend the amount which they would receive from their respective funds.

Congress, it will be remembered, had merely fixed a minimum of one dollar per acre on the occupant lands.<sup>41</sup> No legislation, either State or National, had ever definitely determined the price to be charged; this was now the task of the State.

Complicating the situation was the fact that the min-

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40. In a report made to the Tennessee Legislature, November 1st, 1821, by the Committee on Education, it is stated that this territory was "already in the possession of occupants." (Printed in Nile's Weekly Register, vol. 21. p. 299.) Merriam says that all of this land which was fit for cultivation, and to which the Indian title had been extinguished, had been settled prior to 1806. (Higher Education in Tennessee, p. 39.)

We may be certain that as the Act of Congress allowed pre-emptions of 640 acres to each occupant, not exceeding his previous claim, the larger part of the arable land in this district was already subject to pre-emption claims in 1806.

41. Merriam, usually very accurate, erroneously states that the Act provided that these lands should be sold at not "more" than one dollar per acre. (History of Higher Education, p. 38.)

imum of two dollars an acre, placed by Congress upon the college and academy tracts, was an unusually high price in those days; in fact, it is doubtful if much of the lands could have been then sold at that rate. Even one dollar per acre was, generally speaking, a high price.<sup>42</sup>

It was also manifest that Congress had not had in mind the contingency that the educational tracts would include the occupant lands, and had expected that the occupants would receive their lands at a less price than the minimum fixed upon the college and academy tracts; otherwise the difference in the two provisions was meaningless.

To discharge the trust confided in the State with equal justice to all, and with due regard to all conflicting equities, became now a task of no little delicacy and difficulty. As that charming and diplomatic old knight, Sir Roger de Coverley, used to say, when called upon to settle a dispute between his neighbors, "much might be said on both sides."

However, in view of the extreme hardship which would have resulted to the settlers from strict, literal

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42. In the report of the Committee on Education, cited in note 40 supra, it is stated that in 1806 one dollar per acre "was considered a high average price."

Up to this time no public land had ever been sold in Tennessee at more than fifty cents an acre. The price fixed by the North Carolina Act in 1777 was twenty-five cents. (North Carolina Acts of 1777, 2nd sess., chap. 1, sec. 4; Scott's Laws, vol. 1, p. 159.) The Act of 1783 fixed fifty cents an acre, payable in specie certificates, etc. (North Carolina Acts of 1783, chap. 2, sec. 10; Scott's Laws, p. 269), and by the cession Act of 1806, Congress had authorized Tennessee to perfect titles based on warrants issued under this Act to countless acres in the State.

When, in 1799, Tennessee had contemplated opening her own land offices, she had fixed the price of lands at twenty-five cents an acre. (Acts of 1799, ch. 24; Scott's Laws, vol. 2, p. 264.)

The public lands of the United States were, however, at that time selling at two dollars an acre.

compliance with the terms of cession,<sup>43</sup> and the grave doubt whether the lands could have been sold at the price fixed for many years, it cannot be denied that the State, being thus confronted with a condition of affairs for which no express provision had been made, was justified in departing from the letter of the cession, provided she should in some other manner give effect to its spirit and provide for the objects to be attained.

The course, however, which was adopted by the Legislature, was extraordinary, and without apparent justification, even if somewhat palliated by tardy and partial efforts at compensation made in later years. For on the very day on which the Legislature accepted the Act of Congress and solemnly enacted that "the provisions thereof be carried into effect," it directed that the college and academy tracts should be located "in such manner and in such places" as to contain, respectively, one hundred thousand acres of land "actually claimed by occupancy, or fit for cultivation and improvement," and provided that the occupant claimants of lands, including those within these two tracts, should receive grants for their lands at the rate of one dollar for each acre, payable in ten annual installments, without interest, beginning in 1808. All the remainder of the land in the district south of French Broad and Holston, lying

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43. To have fixed the price of all the lands in the district at two dollars an acre would have been an unnecessary hardship on all the settlers; to have fixed it at two dollars within the college and academy tracts, and at one dollar outside of these two tracts, would have been, in addition, great injustice as between the settlers within these tracts and those outside. It was furthermore impracticable to have fixed the price of the occupant lands at one dollar, and then to have laid off the college and academy tracts in scattered parcels, aggregating 200,000 acres; for even if so much unoccupied lands could have been found, it would have been impossible to sell them for anything like two dollars an acre, the lands already taken up by the occupants constituting, undoubtedly, far the most valuable portions, at least for farming, practically the only purpose for which land had a value in those days.

outside of the two educational tracts, was reserved to the State and to be sold for her own use and benefit; no provision was made for the sale of any lands in the district other than those claimed by occupants.<sup>44</sup>

The Legislature thus provided for the sale of only such part of the educational tracts as was claimed by occupants, and for the sale of this part at one-half of the minimum price fixed by Congress and upon long time, retaining unto herself all the remainder of the district. Thus, at one stroke, the college and academy fund was cut down to less than one-half. There is, as I have said, no apparent justification for this legislation.

The State had, under the Congressional cession, received title to a vast area of land to which its previous claim had been, to say the least, of doubtful validity; and having received the benefits of the cession, it had become bound, not only legally, but morally, to faithfully discharge every obligation and trust imposed upon it as a condition of the cession.

While it must be conceded that the State had a right, at least morally, to vary the details by which the provisions of the cession were to be carried out, still in varying those details she was bound to do so in such manner as to accomplish the purpose of the cession. She might depart from the letter, but the spirit she was under solemn obligation to fulfill.

The object and purpose of Congress had been to provide from the sale of these lands south of the French Broad and Holston a fund of four hundred thousand dollars for the use of the colleges and academies. Whatever the details by which this was to be done, this

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44. Acts of 1806, chap. 2, passed September 6, 1806; Whitney's Land Laws of Tennessee, p. 341; Edward Scott's Laws of the State of Tennessee, vol. 1, p. 915. It was not until 1819 that the lands in the district south of French Broad and Holston were opened to general purchase by others than occupants, and then at the price of fifty cents an acre.





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was the object sought. The State received the land charged with this trust. If, out of sympathy for the settlers or from practical difficulties, she chose to depart from the method of compliance provided, to the detriment of the colleges and academies, she was bound to make good to them its provisions in some other way; otherwise it was her duty strictly to enforce the Act. She did not have the right to be charitable to the settlers at the expense of the institutions of learning; the charities of a State, like those of an individual, should be paid out of her own pocket.

Especially was this true when, under the terms of this same cession, the State had received a large acreage of land in this very district south of French Broad and Holston ample to have satisfied the claims of the institutions of learning, as well as of the settlers, to say nothing of the vast area which the State received outside of this district, of which she retained the benefit.

View the matter in what light we will, we are compelled to the conclusion that the State had no right, either legal or moral, to sell a single acre within the college and academy tracts at less than two dollars an acre, unless she at the same time set apart for the colleges and academies such an amount of the land out of the territory ceded her as was necessary, at whatever price she might fix upon it, to realize the fund intended for colleges and academies.

A simple and just solution of all the difficulty would have been to fix the price of all lands in the district south of French Broad and Holston at one dollar an acre, and to have made the college and academy tracts each consist of two hundred thousand acres instead of one hundred thousand acres.<sup>45</sup>

I have thus far dealt generally with this subject. I now come to that time when the State legislation begins to affect specifically the fortunes of our own University.

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45. See Merriam's Higher Education in Tennessee, p. 38.

The prospect of government aid had been most enticing. Small wonder it is that the General Assembly, after its acceptance of the cession, received memorials and petitions from the people of various counties and each of the colleges in East Tennessee, praying for the establishment of the eastern college. Blount county sought its location at Maryville; Hawkins county at Rogersville; and Greeneville College also desired the fund.<sup>46</sup>

And so the trustees of Blount College, allured by the glittering rainbow of promise, were constrained to agree, by a resolution unanimously adopted, that if the Legislature would establish the eastern college within two miles of Knoxville they would surrender their corporate existence and transfer their funds to it.<sup>47</sup>

To the trustees of Blount College, which had depended for so many years upon the uncertain assistance of the public, the assured support thus guaranteed, in spite of the diminution of the fund, must have seemed a vision as grateful as the green oasis to the desert traveler; and it is not surprising that they were easily deceived by a mirage and found the prospect that at first seemed so fair and beautiful, as they hastened toward it, gradually vanish into nothingness.

The Legislature accepted the proposition of the Blount College trustees, and in 1807 chartered the new college under the name of the "President and Trustees of the East Tennessee College;" endowed it with that part of the Congressional fund designed for East Tennessee; appointed thirty trustees, of whom Archibald Roane and John Sevier had been in the original board; repealed the charter of Blount College; transferred to the East Tennessee College all its corporate funds, prop-

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46. The Goodspeed History of Tennessee, p. 418.

47. White's Early History of the University, p. 15; see also recitals in chap. 78, Acts of 1807, sec. 3; Scott's Laws, vol. 1, p. 1061.

erty and effects, thus merging the two into one; and located the new college "on ten acres of land within two miles of Knoxville, conveyed in trust for the use of said college by Moses White, at a place called the Rocky or Poplar Spring," which was near the old Branner residence in Shieldstown; providing, however, that the buildings of Blount College should be temporarily used and that its trustees should remain in control of affairs until the new trustees might take charge.<sup>48</sup>

At the same time the Legislature also began with a flourish of trumpets to provide for the care of the fund to be realized for the support of the colleges, and appointed a commission of six, among whom were James Park and John Overton, to superintend its management and investment.<sup>49</sup>

The next year, the Trustees of East Tennessee College met and organized, retaining the Rev. Mr. Carrick as president.<sup>50</sup>

And here, saith our Chronicler, feminine names disappear from the college record.

During this year Mr. Carrick was stricken with paralysis, and passed into his well-earned rest, dying when the new college was in the first flush of hopeful anticipation, before the dark days of disappointment had come. He now sleeps beneath the myrtle and the elms in the historic graveyard of the First Presbyterian Church of this city, where also rest William Blount and James White, with the mysterious and unexplained inscription upon his head-stone: "Samuel C. Z. R. Carrick," the three intermediate letters not being, so far as history shows, a part of his name. His head-stone recites that he first planted the Presbyterian religion in the wilds of Ten-

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48. Chap. 64, Acts of 1807, passed October 26, 1807, and chap. 78, Acts of 1807, passed December 3, 1807. These two Acts are printed in full in Appendix E and F, respectively.

49. Appendix E, Sec. 2.

50. White's Early History of the University, p. 16.

nessee, that he was the founder and first pastor of the First Presbyterian Church of this city, and the first president of East Tennessee College, and bears the appropriate lines: "Truly the last end of the good man is Peace. How calm his exit! Night dews fall not more gently to the ground; Nor weary, worn out winds expire so soft."<sup>51</sup>

From this time until after the Civil War the history of the College is a story of struggle and repeated disappointment; of heroic effort on the part of successive presidents, conspicuous among whom are Sherman, Coffin, Estabrook and Cook; of alternating periods of advance and retreat.

Yet in spite of obstacles and disappointments the college, conscious of its high mission, kept ever bravely onward. The record of those days is, on the whole, one of triumph, for it shows that the light of the higher learning can never be entirely extinguished, and that, though often temporarily enshrouded in gloom, the mist will at length pass away and the light shine again serene and clear. Education, like truth, though crushed to earth, will rise again triumphant; for it is one of the elemental and vital forces that shall and will prevail.

The history of the period before the war was largely taken up with the effort to realize the land grant fund, and to overcome the popular prejudice which was engendered against the college on account of this struggle.

For the settlers were not content with having had the minimum price fixed upon their lands, and with the additional concession of long time payments, and there now commenced a bitter struggle that lasted for many trying years, beginning with their repeated and successful efforts to have the times of payment extended, growing into a request for remission of part of the interest,

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51. The inscription is given in full in White's Early History of the University, p. 17.





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and culminating in a demand for the release of part, if not all, of the principal itself.<sup>52</sup>

The long history of delay began, as if by an irony of fate, on that same day in 1807 on which the Legislature completed the organization of the college and appointed the commissioners of the college fund. On that day, at the first kindling discontent, the Legislature took the initial step in yielding to public clamor, by extending for one year the time for payment of all purchase money installments on all lands south of French Broad and Holston,<sup>53</sup> this being repeated by the next General Assembly and a somewhat longer extension given.<sup>54</sup>

Before the close of 1809, the settlers having become more imperious in their demands, the yielding Legislature took the next step in dissipating the educational fund, by postponing indefinitely the principal of all the installments, and also somewhat extending the time for

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52. The Committee on Education, whose report is cited in note 40 supra, state that these lands were "necessarily sold to the occupants upon extensive credits, the interest of which has been but partially collected, producing in the meantime all the vexations and costs, both to the government and people, that in the United States are known to exist, when the people are debtors to their government."

That the United States also has been obliged to indulge its needy debtors by suspending forfeiture of lands for delay in making payments, see, for example, 5 U. S. Stat. at Large, pp. 261, 509 and 555.

53. Chap. 67, Acts of 1807, passed December 3, 1807; Whitney's Land Laws, p. 354; Scott's Laws, vol. 1, p. 1053. Payments to be made in ten annual installments, to begin March 1, 1809, bearing interest from the time they had originally fallen due.

54. Chap. 34, Acts of 1809; Whitney's Land Laws, p. 357; Scott's Laws, vol. 1, p. 1115. Payments to be made in ten annual installments, beginning July 15, 1811. On default in payment of any installment, lands to be sold, and in absence of bidders college and academy lands to be bid in for the use of these institutions.

the payment of interest;<sup>55</sup> this legislation also being substantially repeated by the General Assembly of 1811.<sup>56</sup>

Again, so far as this legislation affected the college and academy tracts, the State was indulging her sympathetic inclinations at the expense of the institutions of learning.

It was during these days that the Legislature, in order to relieve the necessities of the College, which had not yet been able to open its doors, with an exceeding and ever memorable generosity, allowed the trustees, in lieu of the funds to which they were entitled, the privilege of establishing a lottery for the benefit of the College, at their own expense, and appointed Hugh Lawson White, Robert Craighead and others as trustees for that purpose. But in spite of the enticing advertisement of the trustees, showing that there were but little more than two blanks to each prize in the lottery, and appealing to the public to subscribe to the tickets “to aid the funds of a seminary of education where the youth \* \* \* may have their minds prepared in such manner as will make them ornaments to their families and useful to their country,” sufficient tickets were not sold and the lottery had to be abandoned.<sup>57</sup>

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55. Chap. 47, Acts of 1809; Whitney's Land Laws, p. 359; Scott's Laws, vol. 1, p. 1146. Distress warrants were to issue for the collection of interest due November 1, 1811, and annually thereafter.

56. Chap. 9, Acts of 1811; Whitney's Land Laws, p. 361; Scott's Laws, vol. 2, p. 6. Payment of principal postponed “until the Legislature shall otherwise direct;” interest due on installments postponed until November 1, 1813, and annually thereafter; lands to be sold in case of default in interest.

57. White's Early History of the University, p. 20. In early days in Tennessee a lottery was a favorite method by which to raise funds for needy and deserving institutions, private as well as public, and individuals as well. Thus, for example, in 1824, at a single session of the Legislature, authority was given for lotteries for the purposes of building Masonic halls in Columbia and Franklin, of completing a public road from Jonesborough to the North Carolina

About this time, also, a pleasing variety was given to the legislation by remitting altogether the interest that had fallen due in 1810 and 1811, on account of the neglect of the Legislature to appoint any one to receive it, thereby, as it was recited, having prevented the citizens from making payments.<sup>58</sup> It being afterwards discovered, however, that certain energetic citizens had paid this remitted interest, nevertheless, it was promptly refunded to them.<sup>59</sup>

Indefinite postponement of the principal and extension of the interest now became the order of the day, and was re-enacted in 1813,<sup>60</sup> with the additional feature of remitting all interest which should accrue during the interval of postponement, this legislation, in turn, being repeated in 1815.<sup>61</sup> Further extensions were made on both principal and interest by the Legislature of 1817.<sup>62</sup>

In 1819 the Legislature for the first time provided for the sale of such lands as were not claimed by occupants, and authorized the general taking up of all vacant lands south of the French Broad and Holston at fifty cents

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line, and of benefiting Thos. White and Jno. McCracken and their respective creditors, and provisions were made in reference to a lottery for the erection of a hospital in Nashville. (Acts of 1824, chaps. 33, 76, 81 and 133, respectively.)

58. Chap. 9, Acts of 1812; Whitney's Land Laws, p. 365; Scott's Laws, vol. 2, p. 79.

59. Chap. 145, Acts of 1819; Whitney's Land Laws, p. 374.

60. Chap. 51, Acts of 1813; Whitney's Land Laws, p. 367. Interest postponed until November 1, 1815, and all interest which should accrue in the interval remitted.

61. Chap. 12, Acts of 1815; Whitney's Land Laws, p. 357. Payment of all interest and principal postponed until November 1, 1817, and all interest remitted which should accrue in the interval.

62. Chap. 88, Acts of 1817; Whitney's Land Laws, p. 368; Scott's Laws, vol. 2, p. 366. Payment of all monies suspended until the rise of the next General Assembly; all accrued interest to be paid in three annual installments, beginning November 1, 1818; collection of interest falling due in 1818 and 1819 suspended until the next General Assembly.

an acre.<sup>63</sup> As this applied, with the rest, to such lands in the college and academy tracts as had not already been granted to occupants, it was, as to these lands, a further reduction below the minimum price, which would well-nigh complete the ruin of the college and academy funds. Partly, perhaps, for this reason, the Legislature provided that the Act should not take effect without the assent of Congress, an assent which seems never to have been given.

In this same year the principal due on lands was again indefinitely postponed, likewise interest extended.<sup>64</sup>

In view of this legislation it is not astonishing—in spite of the privilege that had been given the settlers in most of these enactments of making payments on the interest at any time they might choose, and even on the principal itself, if they insisted upon it—that East Tennessee College was, from sheer poverty, never able to open its doors until the year 1820, when it united with the Hampden-Sidney Academy, that had been chartered at Knoxville in 1806 in pursuance of the same land grant Act, and which had been put into successful operation at Knoxville in 1817, and kept open by its able president, Mr. Sherman, for four years, supported by subscription. The college and academy, however, though united, each retained its own board of trustees and the control of its own funds.<sup>65</sup>

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63. Chap. 54, Acts of 1819; Whitney's Land Laws, p. 369; Scott's Laws, vol. 2, p. 501. Prior to this the only grants authorized in this district, except upon occupant claims, had been certain grants to religious associations (chap. 13, Acts of 1809) and to persons building iron works (chap. 156, Acts of 1815). The preference right of occupants had been hitherto preserved by various extension Acts, giving them further times in which to obtain their grants. (Chap. 20, Acts 1811; chap. 11, Acts 1812; chap. 33, Acts 1813; chap. 33, Acts of 1815.)

64. Chap. 97, Acts of 1819; Whitney's Land Laws, p. 372. Payment of interest due for the years 1818 and 1819 postponed until November 1, 1820, and 1821, respectively. Lands to be sold in case of default in payment of interest.

65. White's Early History of the University, pp. 20 and 21.





Rev. Thomas W. Humes, A.M., S.T.D., Tenth President  
East Tennessee University, 1865-79,  
University of Tennessee, 1879-83.



Rev. William D. Carnes, A.M., Eighth President  
East Tennessee University, 1858-60.

The lax management of the educational fund and the deplorable condition into which it had fallen is forcibly illustrated by the message of Governor Joseph McMinn to the General Assembly, in 1821, in which he says: "It is incontestably true that even the officers of government are ignorant of many of the most material facts from which alone a tolerable estimate of the available character of the fund can be obtained. We all know that two hundred thousand acres of land, south of French Broad and Holston rivers, at the price of one dollar per acre, was appropriated to the establishment and support of colleges and academies; but in what manner collections on the sale of those lands have been made, and to what amount; how much of the principal or interest has been voluntarily or otherwise paid; or how much still remains due or to become due, is scarcely known to any individual within the State, and perhaps it would not be practicable for the Legislature to inform themselves satisfactorily on the various points connected with the subject by reports drawn from any department of the government. \* \* \* I submit to you whether the desire of conforming your acts to the rules of constant right will not urge the expediency of devising some plan of acquiring a full knowledge of the manner in which the whole business has been conducted, from its first origin, so as to exhibit the true state in which it may be now found."<sup>66</sup>

In pursuance of this recommendation the Senate adopted a joint resolution, introduced by Aaron V. Brown, for the appointment of a Select Committee to make an investigation of the matters embraced in the Governor's message,<sup>67</sup> but the House refused to concur in this resolution,<sup>68</sup> and there the matter dropped, in

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66. Governor's message, September 17, 1821. Senate Journal for 1821, at pp. 20 and 21.

67. Senate Journal for 1821, pp. 41 and 42.

68. House Journal for 1821, p. 45.

spite of the fact that in the fall of that same year Governor McMinn's recommendation was repeated by his successor, Governor William Carroll.<sup>69</sup> The Legislature, instead, passed another Act for the relief of the settlers, repeating the old story of indefinite postponement of the principal and extension of the interest;<sup>70</sup> only to be again repeated in 1822.<sup>71</sup>

In the midst of these dark days, however, there came one which Tennessee should note upon its calendar as a golden day in its dealings with the colleges.

The president and trustees of the University of North Carolina, to whom the State of North Carolina had issued warrants for many thousand acres of land in Tennessee, founded upon military services that had been performed by certain officers and soldiers of the Continental line of North Carolina, who had died, leaving no heirs in the United States, had presented a memorial to the Tennessee Legislature, praying that grants might issue upon these warrants, and that all their lands in Tennessee might be exempt from taxation, offering to give a fair equivalent for such exemption.

There was, however, grave doubt as to the validity of these warrants,<sup>72</sup> and the Legislature directed the

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69. Governor's message, October 1, 1821; Senate Journal, 1821, p. 98.

70. Chap. 148, Acts of 1821, p. 144. Sales for default in payment of interest suspended until May 1, 1823; two-thirds of accumulated interest to be paid by said date, the remainder, with that accruing in 1822, to be paid by May 1, 1824.

71. Chap. 8, Acts of 1822, p. 11. November 1, 1823, substituted for May 1, 1823, in all provisions of chap. 148 of Acts of 1821.

72. There was no doubt but that under the reservations made by North Carolina in her cession of 1796, and the compact between North Carolina and Tennessee in 1804, ratified by Congress in 1806, and supplemented in 1818, it was the duty of Tennessee, in general, to issue grants upon land warrants issued by North Carolina for services rendered by her Revolutionary soldiers and officers. (See

appointment of two commissioners to investigate and adjust the claim of the University of North Carolina, authorizing them to enter into an agreement with the University concerning the warrants and exemption from taxation, which, it was provided, should be binding on the State.<sup>73</sup>

Governor Carroll having appointed Jenkins Whiteside and James Trimble as commissioners, they, on August 26th, 1822, entered into a compact with the University of North Carolina, directing that grants should issue upon its warrants, and agreeing that all lands owned or acquired by the University within Tennessee should be exempt from all taxes until January 1, 1850; the University, in return for this exemption from taxation and the settlement of the controversy, agreeing to transfer sixty thousand acres of its land warrants to two public seminaries, designated by the commissioners, "as a fund for the support of education in said seminaries," one-third, or twenty thousand acres, to East Tennessee College, and two-thirds, or forty thousand acres, to Cumberland College, which had been designated as the Western recipient of the land grant fund,<sup>74</sup> the University further agreeing to assign to the two colleges, in like manner,

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Historical Note, Appendix B.) But Tennessee contended, apparently with justice, that after the death of the parties entitled to the warrants North Carolina had no right to issue them to other persons, even so deserving as the trustees of her State University, and that grants ought not to issue on such warrants, or if issued, that they would vest in the State of Tennessee. (See recitals in Compact, Whitney's Land Laws, p. 481.)

73. Acts of 1820, chap. 3, p. 8, passed August 14, 1822; Whitney's Land Laws, p. 480. The commissioners were especially authorized to direct how these warrants should be disposed of, and to whom grants should issue; the lands, however, to be located west of the Tennessee river. The agreement made by them was to be published with the Acts of the Legislature.

74. It had been designated by the Legislature as the Western College, September 11, 1806. (Acts of 1806, chap. 7; Scott's Laws, vol. 1, p. 929.)

one-half of all military land warrants which might in the future be issued to it by North Carolina.<sup>75</sup>

It was a generous gift on the part of the State, through its commissioners, none the less generous because indirectly made, and one of which we should not fail in fitting recognition.

The prospect of this additional source of revenue, in supplement of the depleted land grant fund, was most welcome and gave the trustees of East Tennessee College renewed courage and stout hearts with which to carry on the struggle against opposing odds.

In the following year the Legislature, as if conscious of the great injustice that had been done to the institutions of learning, and desiring to make some reparation, and yet at the same time solicitous of further indulgence to the settlers,<sup>76</sup> made a desperate effort to steer between

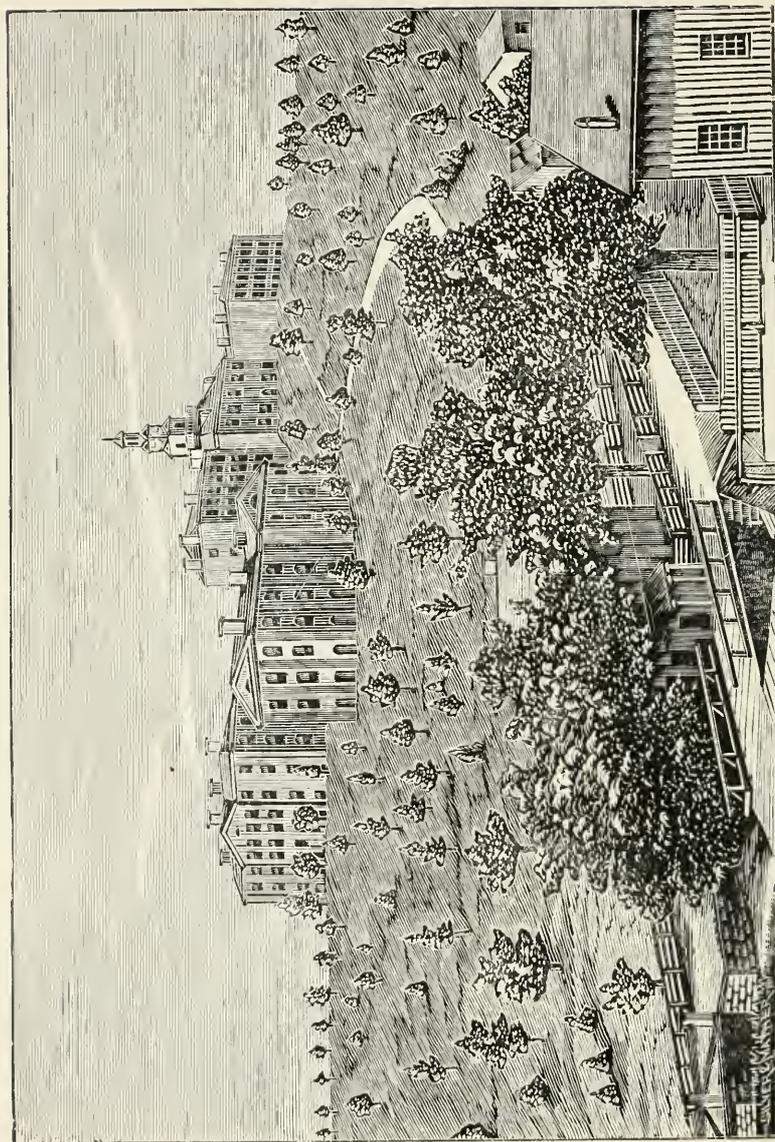
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75. See Compact, Whitney's Land Laws, p. 481. The agreement was made with Joseph H. Bryan, agent of the trustees of the University of North Carolina.

No further warrants seem to have ever issued. The 60,000 acres were to be transferred, subject to contracts previously made for locating and procuring grants. The University was to warrant titles to 45,000 acres at \$1.50 an acre, with interest, but liability to terminate on all lands on which no adverse claim had been made by January 1, 1831; subsequent warrants to be assigned without any guaranty of title. The compacts designated the specific warrants which were to be transferred to each of the two colleges. (See, generally, Merriam's Higher Education in Tennessee, p. 36.)

76. It must not be forgotten that the necessities of the settlers were, to a large extent, real; many of them being very poor, and the enforcement of the purchase money often a grievous burden. Thus, in 1821, as appears from a report of a committee of the House, there had been four hundred and sixty-six tracts advertised for sale, of which two hundred and five had been bid in by the State, and forty-five by individuals. The committee further reported that large numbers would be unable to pay the interest next accruing. (House Journal for 1821, p. 120. See also Governor McMinn's message, cited in note 64 supra.) If the State alone had been interested in the proceeds of this land, the constant postponements and





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Scylla and Charybdis. The expediency hit upon was this: to remit altogether, in the first instance, one-third of the purchase money still due on all lands south of the French Broad and Holston, and then, by way of atonement to the institutions of learning, to vest in them the entire unremitted balance due upon all lands that had been previously sold within the district, whether without or within the college and academy tracts, together with all such lands as might be subsequently re-sold for default in payments and bid in by the State, or that had been previously sold, and should not be redeemed by the owners, this gift being, as was recited, "in consideration of the delays of payment heretofore or hereafter to be sustained by the colleges and academies," and in order "to make a final appropriation and investiture of the moneys and lands aforesaid, \* \* \* \* and put it out of the power of the Legislature to interfere hereafter by indulging the debtors or in any other way whatsoever."<sup>77</sup>

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partial releases would have been, perhaps, no more than right. The fundamental wrong consisted in the fact that the State postponed and remitted funds in which she herself had no interest, and for the collection of which the National Government had made her a trustee. Small wonder it is, however, that the settlers, knowing that the State was probably willing to forego its own claims, became embittered against the distant colleges and academies, for whose benefit the State was continually being urged to insist upon the collection of the purchase money; a bitterness constantly fed by demagogues for their own purposes.

77. Acts of 1823, chap. 30, passed November 15, 1823; Whitney's Land Laws, p. 378; Haywood & Cobbs' Statute Laws of Tennessee, p. 134. The whole amount, principal and interest, due was to be calculated to May 1, 1824; one third of this amount to be then remitted; one-fifth of the remaining two-thirds to be paid by the said May 1st, and the remainder in six interest-bearing annual installments; land to be sold on default in payment of any of these installments, but to be subject to redemption.

Apparently this Act only applied to lands that had been already sold, and not to subsequent sales of lands that might be made by the State for its own benefit outside of the college and academy

Thus did the State make effort to compensate the institutions of learning for all the past and to partially atone for the original wrong of 1806. For this effort it should be given due credit.<sup>78</sup> Unfortunately it was but partial at the best, and came too late. There are no data from which to-day we can ascertain exactly the fund thus transferred by the State to the institutions of learning; probably it was small.

Furthermore, so unaccustomed were the settlers to making payments upon their lands that it was too late to make a change of habit. A few days later the last step in reducing the educational fund was taken, by an Act which made all of the territory that had been acquired by Tennessee east and north of the Congressional line subject to entry at twelve and one-half cents an acre, the Act being so broad in its terms as to include the lands south of the French Broad and Holston, and even those within the college and academy tracts; and this was the melancholy ending of the provision in the Cession Act of 1806, requiring these lands to be sold at not less than two dollars an acre.<sup>79</sup>

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tracts. The proceeds due for lands within the college and academy tracts, and the defaulted lands within those tracts bid in by the State and not redeemed, were vested in the colleges and academies according to the tracts in which they were located. Other defaulted lands and the balance then due the State on lands outside of these two tracts were vested one-fourth in each of the colleges and one-half in the academies.

78. This effort at compensation has generally been overlooked in the discussion of this subject. Thus Mr. Merriam recites the fact that one-third of the purchase money was remitted in 1823, but does not refer to the counter gift from the State. (Higher Education in Tennessee, p. 39.)

79. Acts of 1823, chap. 49, passed November 22, 1823; Whitney's Land Laws, p. 308; Haywood & Cobbs' Statute Laws, vol. 2, p. 113.

Mr. Merriam states, without giving his authority, that Congress in 1823 repealed the clause of the Act of 1806 fixing a minimum price on the college and academy lands. (Higher Education in Tennessee, p. 38, note.)

The only Act of Congress upon this subject was one repealing

“Considerable payments,” we read, “were made in 1824, but in 1825 the occupants of the lands refused almost unanimously to pay any more;”<sup>80</sup> a statement corroborated by the fact that at this time there appear various acts of legislation authorizing the trustees of the University to further extend the time for payments.<sup>81</sup>

In this latter year there appears an interesting bit of legislation, apparently intended to carry out the generous gift made the colleges in 1822 in connection with the compact made with the University of North Carolina, by which, however, in certain respects the intended gift appears to have been somewhat reduced and partly changed from a gift into a payment on the land grant fund.

Under the compact of 1822, it will be remembered,

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so much of the Act of 1806 as had provided “that the lowest price of all lands granted or sold within the ceded territory should be the same as should be established by Congress for lands of the United States.” (Act of Congress, February 23, 1823; 5 U. S. Stat. at L., p. 729.) This proviso of the original Act had been inserted between the provisions as to college and academy lands and that as to the settlers’ rights of pre-emption. While the exact construction of the Act of 1806 is one of some little difficulty, raising the question, for example, whether or not it was intended to prevent the sale of the pre-empted lands at a less price than those fixed by the United States upon its lands, still it is clear that the repeal of this clause did not, in any way, repeal the minimum limit on the college and academy lands, but merely authorized the sale of other vacant lands north and east of the Reservation line at less than \$1.50 an acre, the price at which public lands of the United States were then selling. (5 U. S. Stat. at L., p. 566.)

Previous to 1820 public lands of the United States had sold at \$2.00 an acre. (See 5 U. S. Stat. at L., pp. 407, 410, 466 and 522.)

80. Merriam’s Higher Education in Tennessee, p. 39.

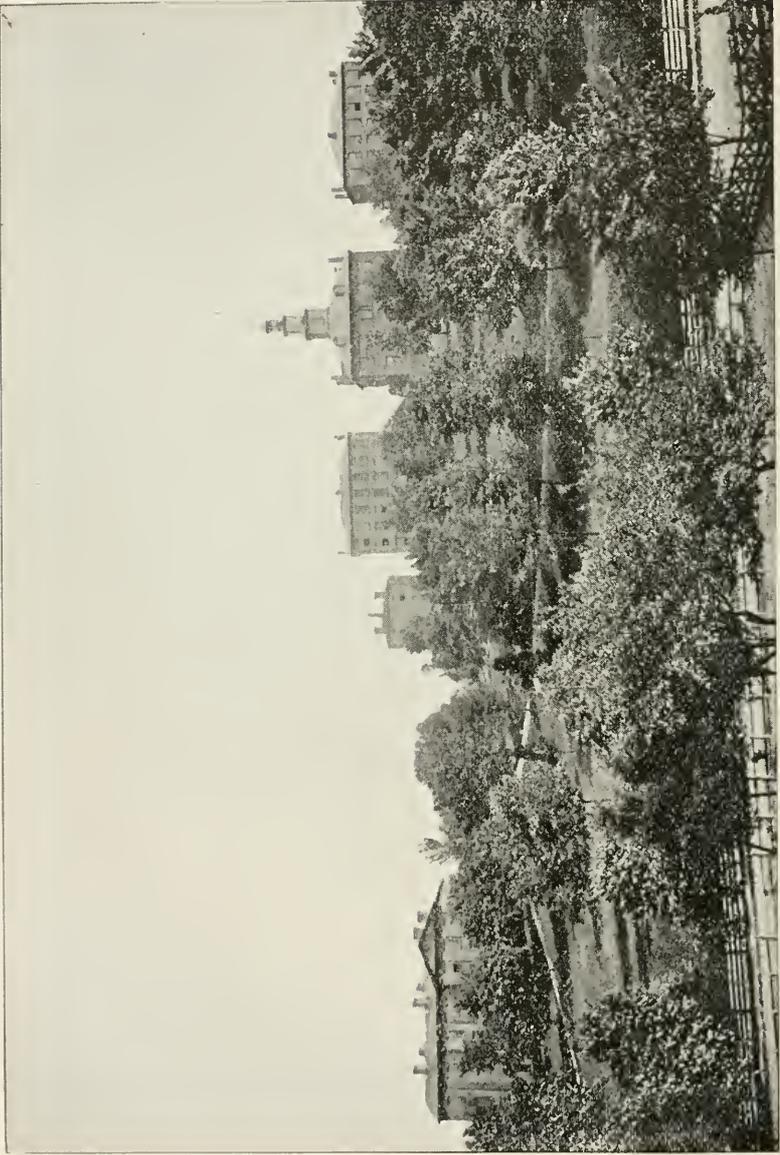
81. Acts of 1824, chap. 24, authorizing the trustees of the two colleges to postpone the sales of land, provided that interest was paid in advance for the period of postponement; and Chap. 73, Acts of 1825, authorizing the redemption of lands sold for the payment of interest, provided the trustees of the two colleges consented. (Whitney’s Land Laws, p. 381.)

the University of North Carolina had agreed to assign to the two colleges one-half of all military warrants which might thereafter be issued to it by the State of North Carolina. Probably between 1822 and 1825 a considerable number of such additional warrants were issued, whose validity had never been adjudicated by Tennessee. Accordingly, in 1825, an Act was passed, providing for a commissioner to examine all military land warrants laid before him by the University of North Carolina, East Tennessee College or Cumberland College, which had been issued to the University of North Carolina, and to adjudicate their validity, not exceeding in the aggregate one hundred and five thousand acres, upon which adjudication a corresponding amount of land should be sold by the State at certain specified prices, one-third of the proceeds to be paid to the University of North Carolina, one-third to be appropriated to the use of common schools, two-ninths to be paid Cumberland College, and the remaining one-ninth to East Tennessee College. All sums so paid to Cumberland College and East Tennessee College were to be treated as made "for the relief of the people residing on the college and academy lands south of French Broad and Holston," and were to be credited as payments upon their purchase money; it being further provided that out of the moneys thereafter collected from the college and academy lands the academies should first be paid an amount equal to that received by the two colleges from the proceeds of these warrants, and that East Tennessee College should then be equalized with Cumberland College.<sup>82</sup>

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82. Chap. 30, Acts of 1825; Whitney's Land Laws, p. 487. By this Act a commissioner was appointed to examine all military land warrants originally issued to the University of North Carolina, which should be laid before him by the trustees of the University of North Carolina, East Tennessee College and Cumberland College, and to adjudicate their validity, not exceeding the aggregate of one hundred and five thousand acres, for which amount certificates should be issued for land west and south of the congressional reservation line, in 25 acre tracts, which should be sold: first, to any occu-





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Apparently this Act of 1825 only applied to the unadjudicated warrants that had been issued since the compact of 1822. As to these warrants, it will be noticed, it reduced the proportion which the colleges were to receive and limited the total acreage and the price at which the lands could be sold. Furthermore, the preference that had been given by the compact to Cumberland College over East Tennessee College, which had been proper in a gift, became discrimination when treated as a payment on debts due them.<sup>83</sup>

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pants of unappropriated land in this territory at fifty cents an acre; next to general purchasers for a time at one dollar an acre; then at fifty cents an acre; and lastly, the residue at public auction: one-third of the proceeds to be paid to the University of North Carolina, one-third to be appropriated for the use of common schools forever, and of the remaining one-third, two-thirds to be paid to Cumberland College and one-third to East Tennessee College. The sums paid to the two colleges was to be treated as made "for the relief of the people residing on the college and academy lands south of French Broad and Holston," and to be credited as a payment upon the sums due from purchasers of such land south of French Broad and Holston as should thereafter be adjudged to be of the third-class in value. No reference is made in this Act to the compact of 1822.

83. The Act of 1825 had provided that it should not take effect unless the President and Trustees of the University of North Carolina should send to the Secretary of State of Tennessee their written consent to the Act before the first day of the succeeding February. This is not now on file in the Secretary of State's office, but I have been informed in a letter received from Dr. Kemp P. Battle, former President of the University of North Carolina, that this written consent, as appears from the University records, was given and sent to the Secretary of State on January 19, 1826.

There is much confusion as to the relation of the Act of 1825 to the compact of 1822, as to which our histories fail to enlighten us. Thus Merriam discusses the compact in detail, but does not even mention the Act; and other authorities are likewise silent on this point.

I was at first of the opinion that the Act of 1825 was intended to supplant the compact of 1822, but after much reflection have reached the conclusion stated in the text that the Act of 1825 was intended to carry out the compact as to warrants issued subsequently, and that a large number of warrants were probably issued after the

compact of 1822. The statement made in note 75, *supra*, should be corrected accordingly.

The Act of 1825 is in its terms very obscure. However, its basic provision as to the adjudication of warrants, manifestly, could not apply to those warrants that had been issued prior to 1822 and were adjudicated by the commissioners at that time.

Furthermore, from extrinsic sources we learn that the University and Colleges subsequently received moneys from Western lands in the two methods provided for by the compact and the Act, respectively. One main difference between the compact and the Act was the fact that by the compact the grants were to issue directly to the University and Colleges, the lands to be their property and disposed of by them in the ordinary way, while by the Act the lands were to be sold by the State and the proceeds paid over to the University and Colleges.

It, therefore, would appear that the compact was carried out from the fact, stated by Merriam, that Cumberland College, which had become the University of Nashville in 1826 (Merriam's *Higher Education*, p. 31), received as her share of the Western lands 33,363 $\frac{1}{3}$  acres, after the locators had received their portion, which was sold in 1834 for \$1.00 an acre and interest, but from which the College eventually realized only \$15,000.00. (*Higher Education in Tennessee*, p. 37.) So, also, Robert N. McEwen, State Superintendent of Public Instruction, in his annual report, 1837, referred to the funds of Cumberland College (or Nashville University, as it was then called) as amounting principally to about \$32,000.00, in notes for the sale of her Western district lands, due in one, two, three, four and five years, from April 8, 1836. (*House Journal*, 1837-8, p. 654.) I have also carefully examined the Day Book of East Tennessee College, covering the period from 1830 to 1858, in which the cash accounts were kept (the earlier account books being lost), and from this it appears that the College sold to various persons at various times portions of its Western district lands, often taking notes therefor, and receiving on this account from April 30, 1832, to February 22, 1859, inclusive, \$19,112.98, less expenses, the exact amount of which cannot be now ascertained. (See Day Book, folios 76, 86, 101, 104, 112, 119, 124, 127, 132, 133, 136, 152, 153, 154, 179, 180, 181 and 185.) This is more than could, by any possibility, have been obtained under the Act of 1825.

On the other hand, we would infer that the execution of the Act of 1825 was at least begun, from the fact that in 1825 and 1826 commissioners were appointed to examine the lands south of the French Broad and Holston and adjudge which were of the "third and last class in value," to be credited with the payments made the two colleges. (Chap. 73, Acts of 1825, and chap. 34, Acts of 1826; Whitney's *Land Laws*, pp. 492 and 499.)

It is impossible to ascertain exactly how much East Tennessee College realized from the Western lands under both the compact and the Act of 1825; probably, however, the total amount was not far from twenty-four thousand dollars.<sup>84</sup>

The hostility to the colleges, at this time, was exceedingly bitter. As an illustration of the influences that during all this period were brought to bear against them and an explanation of a popular prejudice, which has only recently been destroyed, or at least driven to take hidden refuge in our mountain fastnesses in its flight before a growing public intelligence, let me cite the

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Furthermore, in 1829, Daniel Graham, Secretary of State of Tennessee, replying to an inquiry from George Graham, Commissioner of the General Land Office, among other things, as to the value of vacant lands in the Western part of Tennessee, states that "in the summer of 1826 a large stock of 91,000 acres, claimed by the University of North Carolina and the colleges and common schools of this State, was, by direction of the Legislature, divided into small parcels of 25 acres each and sold at 50 cents per acre, cash." (Amer. State Papers, Pub. Lands, vol. 6, p. 32.)

So, too, Dr. Battle writes me, that the University of North Carolina received the proceeds of her Western lands, partly by direct sales made by the University, and partly through the State government, receiving about \$14,000 directly from the State of Tennessee (almost the exact proportion coming to the University of North Carolina from the 91,000 acres said by Graham to have been sold in 1826), and about \$160,580.00 from sales of lands made by the University direct; \$111,399.00 during the land boom of 1835, and the rest before.

On the whole, therefore, while there is much obscurity in this legislation, and it is impossible with the data now at hand to reach an entirely satisfactory conclusion, I think the opinion expressed in the text is probably correct.

84. As shown in note 83, supra, it appears from the College Day Book that subsequent to April 30, 1832, the College received \$19,112.98 from lands obtained and sold by her under the compact. I think it probable that if the old books could be found it would also appear that in 1826 the College received about \$5,000.00, or one-ninth of the proceeds of the 91,000 acres sold by the State in that year under the Act of 1825.

speech of Thomas D. Arnold, a prominent lawyer of Knoxville, who, when a candidate for Congress, in addressing the people south of the river, speaking of the college building, which had recently been erected on Barbara Hill (that had been bought in 1826 for six hundred dollars),<sup>85</sup> denounced the trustees as “having used the people’s money to build light-houses of the sky on them for the sons of a few great men to go up and star-gaze,” and for having had “a law passed for their special benefit, which authorized these gentlemen, when your lands have been sold, because you had not the money to pay your installment, and when, perhaps, you have sold your last cow to get the money, to charge you ten per centum instead of six.”<sup>86</sup>

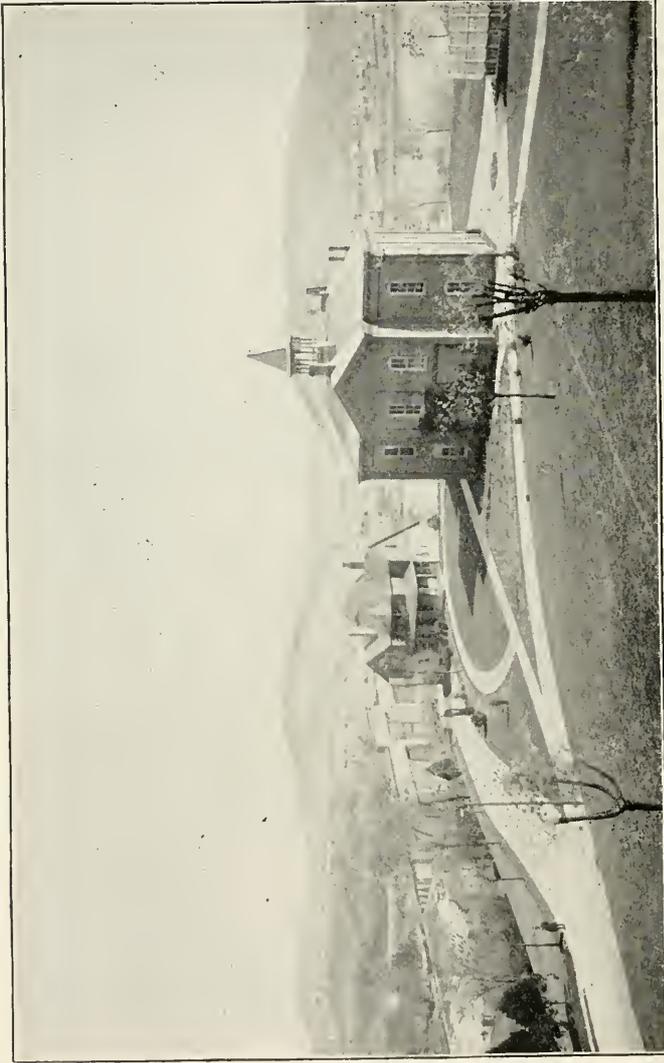
And so, in 1829, Dr. Jno. C. Gunn, the author of Gunn’s Domestic Medicine, a great medical authority, I am told, in olden times, when a candidate for the State Legislature, thus referred to the modest brick central building, which in its unadorned and weather-beaten simplicity still crowns the summit of our college hill: “Behold that great rotunda—that monument of folly—the college. That building for the rich man’s son—that building which closes its doors against the poor man’s child, \* \* \* this temple of aristocracy; why do they forget that the south-of-the-river people paid drop by drop of sweat to erect this tomb of extravagance—this wild goose scheme—this fanciful—this melancholy building raising its proud front on an isolated hill until you become exhausted to reach the summit? \* \* \* \* \*

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85. White’s Early History of the University, p. 23. By chap. 122, Acts of 1822, p. 104, the trustees had been authorized to sell the lots and houses designated as the site of the college, and to appropriate the proceeds to the purchase of a more eligible site in the vicinity of Knoxville and the erection of buildings.

86. Quoted in White’s Early History of the University, p. 26. He doubtless referred to the provision in an Act of 1823, by which the citizens had been allowed to redeem their lands after sale, by paying costs and amount due with twelve per cent.





VIEW LOOKING SOUTH FROM THE UNIVERSITY

Behold the oil brick at \$13.00 a thousand, when brick equally as good could be bought for \$5.00 a thousand. Oh, how the people have been oiled ! Do you forget that tower of Babel—the steeple—as it raises its glittering spire as if supplicating the Author of all good to forgive its projectors for such blind, such foolish extravagance ? \* \* \* A building that cost \$13,000.00 of the people's money ! A steeple that cost \$2,726 of the people's money, including its glittering spire, clock and ornaments ! Fifteen hundred dollars a year, and a fine house to oil the Reverend Dr. Coffin for teaching thirty-five students and half of them small children ! ”<sup>87</sup>

In 1829 the State, weary of its arduous, persevering and heroic efforts to secure for the colleges that which was justly their due under the national land grant, offered to give one-half of a township of land in the country lying south of the Hiwassee river, to which the Indian title had not then been extinguished, to East Tennessee College and the University of Nashville, the name that had been previously given to Cumberland College, provided they would execute a written instrument releasing all their claims south of the French Broad and Holston and all rights which they had acquired to any of the lands in that section.<sup>88</sup>

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87. Quoted *in extenso* in White's Early History of the University, p. 27.

88. Chap. 47, Acts 1829; Whitney's Land Laws, p. 383.

The preamble of this Act was as follows : “ Whereas, a controversy has existed for many years between the colleges and academies in this State, and the citizens residing south of French Broad and Holston and west of Big Pigeon rivers, in regard to large sums of money claimed by said colleges and academies to be due and owing from said citizens; and, whereas, the subject matter of said controversy has frequently been brought before the Legislature of this State, to the great detriment of other business; and also has been productive of much expense and perplexity in the examination thereof; and for the purpose of producing harmony and quiet between a respectable portion of the citizens of this State and the

The Trustees of East Tennessee College, weary of the unequal struggle and compelled by poverty to give up the fight, consented, and executed the prescribed deed of release, placing of record however, in this instrument, their sense of the obligation of the State to pay the balance of the congressional donation.<sup>89</sup>

However, neither the Western academies nor the University of Nashville would yet assent to this inadequate substitute for the magnificent gift intended for them by the Government of the United States; partly no doubt because of the imperfect title of the lands to be given,

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literary institutions therein, and for the purpose of avoiding all future legislation respecting said subject.”

The Act provided that before the land should be located or granted the trustees of the two institutions “in their legal capacity shall make, sign, seal and deliver to the Secretary of State such a deed in writing as will forever acquit, discharge and release citizens residing south of French Broad and Holston and west of Big Pigeon rivers, from all judgments, debts, dues, demands, claims, rents, issues, or suits of any kind, character or description whatever, either in law or equity, and also all rights that they may have acquired by, through or under the sale of any of the lands in said section of country.”

89. Deed of Release, Trustees of East Tennessee College to the citizens south of French Broad and Holston, dated April 20th, 1830. Executed by Wm. Park, President *pro tem.*, Board of Trustees. Recorded April 28th, 1830, in Register's office, Blount County, in book 24, p. 9.

In this deed the Trustees express their desire to settle the controversy with the citizens, and rejoice in the prospect of the complete discharge and release of their lands from the demands of the literary institutions, but add: “We hereby protest against anything in said Act, or in this deed contained from being construed to operate as a release to the State from its obligation to pay this institution the balance of its proportion of the congressional donation. We hold it bound in equity and good conscience to make good to this institution the donation of the congressional government, and relying on the Legislature to hereafter provide for the more extensive usefulness of this literary institution, we cheerfully comply with the provision of the Act of Assembly.” Then, following the language of the Act, they release their claims against the citizens south of the French Broad and Holston and all rights in the lands.

but largely because, being further removed from the settlers, they had not felt so keenly or so grievously the bitter animosity that had been engendered in the long struggle.<sup>90</sup> They therefore refused to accept the conditions of settlement and persevered in their efforts to obtain justice. In 1834 Cumberland College prepared a memorial to Congress "giving a history of the Land Grant Fund, and praying to be indemnified by another grant," but in vain.<sup>91</sup>

In 1835, however, the lands south of the Hiwassee river, having been acquired by treaty from the Indians,<sup>92</sup> and the ceded territory having been established as the Ocoee District of Tennessee,<sup>93</sup> the University of Nashville, wearied into submission, at length also consented to the settlement, and in 1838 the Legislature directed the setting apart of the half township in Ocoee District for the use of the College and University.<sup>94</sup>

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90. In the report by Robert N. McEwen, Supt. of Public Instruction, 1837, he says, speaking of the legislative offer of 1829, "it is understood that the College of East Tennessee and perhaps some one or two academies there agreed to the arrangement, but that the Nashville University and the other academies have not agreed to it, in consequence of which no location was made." (House Journal, 1837-8, p. 655). So, in a report of the select committee on the Ocoee District, Oct. 30, 1837, it is stated that inasmuch as the Trustees of the colleges and academies "have not as yet signified their acceptance of the provision of the Act by complying with its requisitions, the tracts for the use of colleges and academies have never been located." (House Journal, 1837-8, p. 800.)

91. Merriam's Higher Education in Tennessee, p. 391.

92.—See Appendix C.

93.—See Appendix C.

94. Chap. 196, Acts of 1837-8, p. 287; passed January 26, 1838. By the terms of the Act it is doubtful whether the College and University were to receive a half township each, or a half township jointly, as the Act directs the entry taken of the Ocoee District, before the first Monday in November, 1838, to select and designate "the two half townships of land which have been reserved by law for the use of colleges and academies, the money arising from the

It is noteworthy that in this final settlement no compensation was made to East Tennessee College for the excess of western lands that had been given to Cumberland College.

Out of these Ocoee lands, which were almost immediately sold, East Tennessee College realized in cash something over thirty-four thousand dollars.<sup>95</sup> And this, after thirty years of conflict, was the realization of that bright vision which had induced the trustees of Blount College to surrender their independence. The one hundred thousand dollars which Congress had intended the College to receive, if put at simple interest, would, at the time the Ocoee land was sold, have amounted, principal and interest, to about three hundred thousand

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entry of which shall be paid over to the Trustees of East Tennessee College and the Nashville University in equal proportions, upon their agreeing to receive the same in full satisfaction of all claims which they have against the State or the citizens residing south of the French Broad and Holston rivers.”

Mr. A. J. White, Register of Ocoee District, writes me that on November 14, 1839, 72 Grants for 160 acres each, issued to Nashville University and East Tennessee College, in all 11,520 acres, or exactly a half township.

(It will be noticed that the Act apparently intended that the designated land should be sold to individuals as other lands, and the proceeds paid over to the institutions, instead of being granted directly to them.)

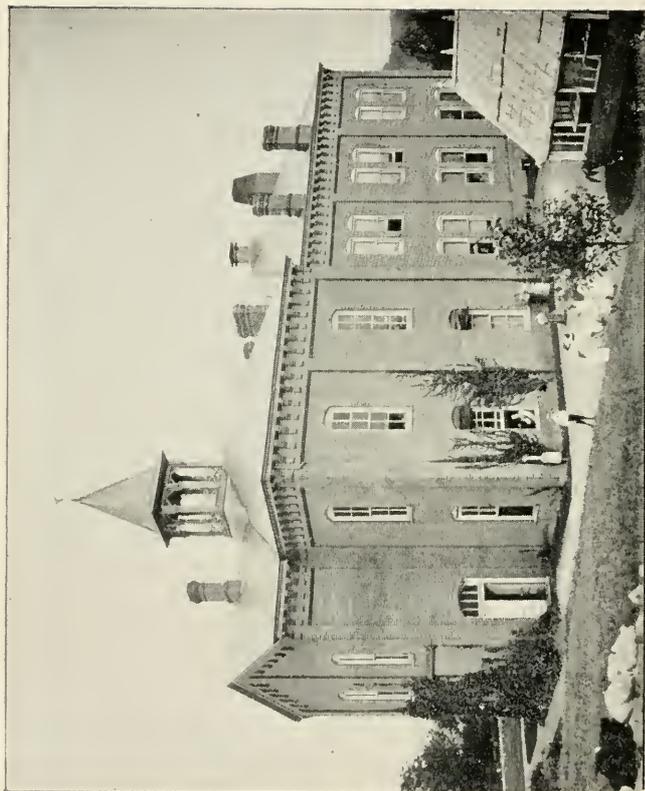
On the other hand, Merriam states that the State gave the University of Nashville a half township in the Ocoee District, or 11,500 acres, and that in 1839-40 it received \$40,000 from the sale of these lands. (Higher Education in Tennessee, p. 39.) So, Col. White implies that East Tennessee College received a half township. (Early History of the University, p. 34.)

This is possibly the correct construction of the Act instead of that stated in the text. I regret I have not sufficient data at hand from which to reach a satisfactory conclusion.

95. The Day Book of East Tennessee College shows cash receipts in 1839, from the sales of lands in the Ocoee district, of \$34,397.29. (Folio 124.)

I have been unable to find any record of further cash receipts from this source.





AGRICULTURAL BUILDING

dollars. In other words, the College ultimately received from both the western district and the Ocoee lands about one-fifth of that which Congress had promised.<sup>96</sup>

From the contest over the land grant fund, and the hostility thereby generated in the public mind, supplemented by the fact, as already stated in reference to Blount College, that there was at that time no efficient public school system in Tennessee, and that the college had no organic connection with even such public schools as then existed and was not supported by them to any great extent, being chiefly regarded as a rich man's college, it came about that the natural tendency of colleges in those days to a purely classical course of training, was intensified, and we are not surprised when we read the programme of the Commencement Exercises in 1827, under its scholarly and energetic President, Dr. Coffin, (our historian having preserved for us this programme *verbatim*)<sup>97</sup> to find that they were of a highly academic nature, embracing four English Orations, two Forensic Debates, two Conferences, a Salutatory Oration in Latin, a Latin Dialogue, a Syllogistic Disputation in Latin, a French Oration and a Greek Oration.

That Commencement Programme of 1827, I hazard the opinion, would almost bear comparison with a Commencement Programme of to-day.

And when we read in the list of participants the names of Charles J. McKinney, John H. Crozier, Samuel

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96. It is a matter of great regret that no records exist by which it can be ascertained how much the College had received directly from the settlers. There can now be found, however, no records earlier than 1830. The auditing committee's report on October 21, 1830, shows that the College then had on hands \$3,249.25 in cash, and \$9,080.00 in well secured notes for money loaned (Day Book, folio 12). How much of this was the proceeds of the college lands south of French Broad and Holston, how much had come from the lands in the western district, and how much from the sale of its former site near Poplar Spring, it is impossible at this date to definitely determine.

97. White's Early History of the University, p. 25.

B. Boyd, James Williams, Joseph L. King, Matthew W. Lindsay, Charles Scott, Ebenezer Alexander, Thomas A. R. Nelson and Thomas C. Lyon: of whom one afterwards became a member of Congress; one, a Judge of the State Supreme Court; one, a minister to Constantinople; one, a Chancellor of Mississippi; two Judges of the State Circuit Courts; and one, Comptroller of the Treasury of Tennessee, we know that the college that educated such students was a great institution, no matter what its fund or its pecuniary fortunes, and we are not astonished to read that, after these Commencement Exercises, the Trustees should have issued a valedictory address to the public, in which "they felicitated themselves with the idea that 'a day of science had fairly dawned' upon them."<sup>98</sup>

If history had preserved for us no other record of East Tennessee College than this one programme, we would know that her days were those of usefulness, and that her life was well spent and rich in the achievements of the sons whom she educated.

The college, it will readily be seen, during all these years occupied a peculiarly anomalous and unfortunate position. Ostensibly it was to receive Government support; practically it did not, but the belief that it was dependent upon the Government naturally tended to deprive it of the support of private individuals. This, chiefly, I believe, together with the theological zeal that has always characterized Tennesseans, causing the up-building throughout the country of the large number of flourishing denominational schools, established by Baptists, Methodists, Episcopalians, Presbyterians and others, has tended to prevent the concentration of funds and teachers in a great central University which could, by combined force, educate the youth of the State more adequately than could each of these separate institutions.

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98. White's Early History of the University, p. 26.

I am not well versed in theological matters, but it is, to say the least, a debatable question in my mind, whether the God of all Mankind, who loveth one denomination equally with another, would not be as well pleased if we should cease our efforts to educate good Baptists, good Presbyterians and other good denominationalists, and should devote our united energies to educating good men and good citizens. It has come to pass, in Tennessee, as has been said, that "of the making of colleges there is no end," and that nearly "every cross roads hamlet has, not its academy or high school, but its college," of which, by the way, the denominational colleges have attained, generally, no little excellence. And now to-day, we have in prospect colleges where our sons are to be educated, not only to be good denominationalists, but to be good Prohibitionists, or good Free Masons, or good Odd Fellows, or the like.

I cannot but believe that this is all wrong, and that this diffusion of energy and scattering of forces is unwise and injurious, and that instead of having for the education of our sons scores of colleges, none of which rise to rank of a high-grade university, it would be ten-fold better to make our local colleges into academies, and to concentrate into one great university, worthy of the name and dignity of the State, the united resources which would give the sons of Tennessee the best education that these times will afford and make it unnecessary for them to leave the borders of their State in order to complete their education.

Before I pass from the ante-bellum records of East Tennessee College, let me note that in 1840 the name of the college was changed by an Act of the Legislature to the trustees of East Tennessee University.<sup>99</sup>

In 1860, Dr. Carnes, then president of the college, obtained a joint resolution of the Legislature requesting

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99. Acts of 1839-40, chap. 98, p. 186. Passed January 29, 1840.

the Judges of the Supreme Court to report at the next session the facts in regard to the appropriation of the college lands under the Act of Congress of 1806, and to state their opinion as to the equitable right of the two universities to further compensation on this account.<sup>100</sup> The trustees appointed John H. Crozier and Thomas C. Lyon to present the claim of the University to the Supreme Court.

There was much hope of success in this matter, but the war came up, and the matter has been sleeping ever since. Is it yet too late for an awakening? Is it yet too late for the State of Tennessee to do equity to the institutions of learning which are its brightest ornaments; to do justice, not only to them, but to its own fair name and fame?

It was in speaking of the acts of the Tennessee Legislature in reference to her college fund, that one of Tennessee's most distinguished and patriotic sons, the Honorable John Bell, many years ago, said: "I will not enumerate them. I would rather cast the veil of eternal oblivion over them; but it should sink deep into the mind of every true friend of his country, that no temporary expedient, no short-lived applause of the people, can justify a legislative body in violating those rules of honor, propriety and justice in the discharge of a public trust, which individuals are bound to respect. The good that is obtained is generally fleeting, and can never weigh in the balance against public credit impaired and public confidence destroyed."<sup>101</sup>

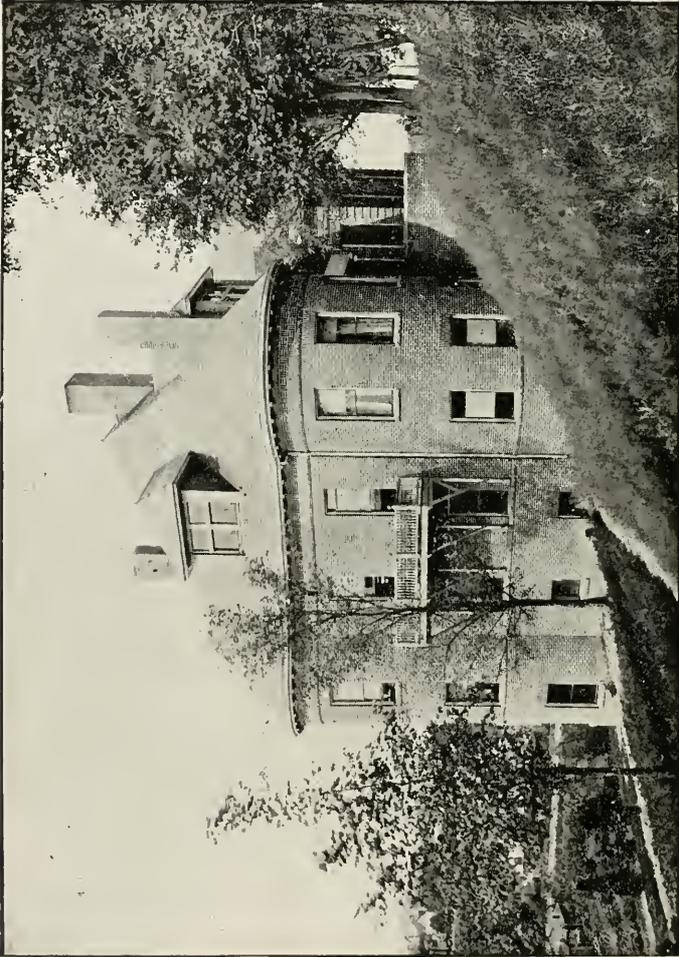
It was not until after the Civil War and the election to the Presidency of the late Reverend Doctor Thomas W. Humes, that cultured and Christian gentleman to whose energy the University owes so much, that the next great step was taken in the history of the University.

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100. Resolution No. 35, adopted March 19, 1860. Acts of 1859-60, p. 676.

101. Quoted in White's Early History of the University, p. 29.





Y. M. C. A. BUILDING, EAST VIEW.

In 1862, the United States had, by the so-called Morrill Act,<sup>102</sup> granted to each State a certain amount of the public lands within its borders, or if there was not such quantity of public land, then land scrip for a corresponding acreage,<sup>103</sup> to be sold by the States, and the moneys derived therefrom invested in "safe stocks," constituting "a perpetual fund," remaining "forever undiminished,"<sup>104</sup> whose interest should be "inviolably appropriated" to the endowment and maintenance of at least one college whose "leading object" should be, "without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life."

The Civil War having prevented the acceptance of this gift by Tennessee until 1865,<sup>105</sup> at which date the time originally limited by Congress for its acceptance had expired, Congress was induced to extend the original Act, so as to still allow Tennessee to obtain its benefits, and the legislature, in 1868, for the second time, accepted the donation and made provisions for obtaining and selling the land scrip, which, by reason of the lack of public lands, the State was entitled to receive, and

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102. Act of Congress, passed July 2nd, 1862, approved July 5th, 1862. This Act is printed in full as Appendix G.

103. A warrant entitling the assignee from the State to locate the designated number of acres upon any of the unappropriated lands of the United States of the kind specified.

104. Except that a sum not exceeding ten per centum of the amount received might "be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures." (Appendix G, sec. 5, sub-sec. 1.)

105. By the express terms of the Act. (See Appendix G, sec. 5, sub-sec. 6.)

directed that the proceeds should be invested in bonds of the State to await subsequent disposition.<sup>106</sup>

However, Congress had provided as one of the express conditions of the Land Grant, that any State claiming its benefits should, within five years, provide a college to receive the endowment,<sup>107</sup> or the grant to such State

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106. The Act of Congress was first accepted by the Tennessee legislature June 6th, 1865. (Chap. 22, Acts of 1865, p. 42; Whitney's Land Laws, p. 516.)

However, the Act of Congress, which had been approved July 5th, 1862, had specifically provided that "no State shall be entitled to the benefit of this Act, unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President" (Appendix G.; sec. 5, sub-sec. 7), and hence this acceptance by Tennessee came almost a year too late to be effective.

By Joint Resolution adopted December 14th, 1866, our representatives in Congress were "instructed" and our senators "requested" to "intercede for Tennessee and use all reasonable and laudable efforts to have said sub-section \* \* so amended as to enable the State of Tennessee to accept the provisions of said Act." (Acts of 1866-7, Joint Resolution No 51, p. 281; Whitney's Land Laws, p. 516.)

Their "laudable efforts" were crowned with success, and by Joint Resolution of Congress, February 28th, 1867, the provisions of the Act of 1862, and of an amendment of July 23rd, 1866, were extended and made applicable to the State of Tennessee. (Land Laws of the United States, Vol. 2, p. 1098.)

Tennessee, thereupon, again accepted the provisions of the Act on February 1st, 1868. (Chap. 32, Acts of 1867-8, p. 33; Whitney's Land Laws, p. 515.)

107. The State was to provide and equip the college; Congress furnishing the endowment fund whose interest should thereafter support and maintain it.

Congress had specifically provided, not only, that the proceeds of the sale of the land scrip should "constitute a perpetual fund, the capital of which "should remain forever undiminished," (except "a sum not exceeding ten per centum of the amount received, \* \* \* for sites or experimental farms"); but also that "no portion of said fund, nor the interest thereon," should be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation or repair of any building or buildings"; and that the

should cease, and it should be bound to refund the amounts received from any lands previously sold.<sup>108</sup>

And hence, as the State had obtained and sold its quota of land scrip and invested the proceeds in its bonds, it was imperative that it should provide the required college. Owing to the condition of the State finances it would perhaps have been difficult, if not impossible, for it then to have made out of its own Treasury a sufficient appropriation to fitly supplement the generous gift of the United States.

The University of East Tennessee, which was already somewhat of a State institution, fortunately, was in a position to assist the State, and was, furthermore, desirous of securing the location of the Agricultural college. It, therefore, under the energetic leadership of Dr. Humes, made application to the State for the Congressional appropriation, offering, if given the fund, to provide the necessary college. Various other institutions and localities made like application, but the efforts of our University were at length crowned with success, and in 1869 the Legislature appropriated the proceeds of the sale of the land scrip to the East Tennessee University, making it the express "duty of the Trustees of said University to establish an Agricultural College, so as to strictly conform with the Congressional enactment," and providing that the fund appropriated should be used only according to the terms of that enactment.<sup>109</sup>

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interest of the fund should be "inviolably appropriated" to "the endowment, support and maintenance" of the college to be provided by the State. Appendix G; Sec. 4, and Sec. 5, Sub-Secs. 1 and 2.)

108. Appendix G, Sec. 5, Sub-Sec. 3

109. Chap. 12, Acts of 1868-9, p. 12, passed January 16, 1869. This Act is printed in full in Appendix II.

May I not be permitted, in this connection, to refer to the fact that under date of February 12, 1869, the Board of Trustees of the East Tennessee University passed a resolution tendering the most hearty thanks of the Board of Trustees to E. J. Sanford "for his

I cannot here forbear from mentioning the historical fact that the city of Knoxville, having been anxious to secure the location of the Agricultural College here, its Board of Mayor and Aldermen, to aid in securing this result, had previously, with commendable alacrity, voted to appropriate fifteen thousand dollars for the purchase of a library for the University when the College should be so located, and that now, this having been accomplished, our excellent city, with an alacrity equal to that with which it had formerly voted to give the library, changed its mind and was only compelled to do so by the Supreme Court at the end of a lawsuit.<sup>110</sup>

The State, it is to be observed, did not in the Act of 1869 appropriate a dollar from its own treasury to aid in providing the Agricultural College, this being made the task of the University. And not only did the State require the Trustees to complete buildings for the accommodation of two hundred and seventy-five students, furnish them with appropriate school furniture, and provide at least two hundred acres of suitable lands, making the whole property worth at least one hundred and twenty-five thousand dollars, before the Government should issue to them the bonds, but it was furthermore made a condition of the Act that the University should at all times be required to give free tuition in the Agricultural College to three students from each county of the State, that number being, in 1873, increased to two hundred and seventy-five students from the entire State,<sup>111</sup> with

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faithful and very efficient services as our agent in securing the location of the Agricultural College at Knoxville, as a branch of the East Tennessee University.”

110. Suit of East Tennessee University vs. Mayor and Aldermen of Knoxville; appealed to the Supreme Court from the Chancery Court of Knox county. The city finally gave the University \$20,000 in city bonds in settlement of the decree against it.

111. Appendix II, sec. 6; amended by sec. 1, chap. 81, Acts of 1873, p. 119, passed March 22, 1873.

the additional requirement that the profits arising from crops on the Agricultural farm should be applied towards paying the expenses of indigent students.<sup>112</sup>

The University thereafter not only shouldered all the burden that had devolved upon the State under the Act of Congress—a burden that well nigh impoverished the University and tied up nearly all the little property it “possessed in unproductive lands and buildings,” but it did so with the additional condition as to free students which, “under easy appointment laws \* \* \* deprives the University practically of all tuitions.”<sup>113</sup>

I call attention to these facts to-day, not by way of complaint, for the University was glad to obtain the appropriation under these conditions, and has no complaint to make in this regard, but as a matter of simple justice to the University, that it may be known how heroically it has struggled, how bravely it has discharged, unassisted, all the duties that have devolved upon it, and to correct an impression often, though erroneously, entertained, that the State, in some way, contributed to the support of the University, and that its appropriation is due to the generosity of the State instead of the United States,<sup>114</sup> an impression, doubt-

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112. Appendix H, sec. 7.

113. Quoted from a very valuable report on the history, condition, needs and objects of the University made to the Board of Trustees by President Charles W. Dabney, in 1888, in which it is also said: “The fact is, it took all the slender resources of the University of that day, with the exception of about ten thousand dollars to acquire the additional land and put up the additional buildings necessary to meet the terms of the proposal which looked so favorable to the friends of the institution who had struggled with severe poverty for over fifty years.”

(Biennial Report of Board of Trustees to the General Assembly, 1887-88, p. 45.)

I am informed that since this address was delivered, in December, 1894, the Trustees have made tuition free to all students.

114. Even the Legislators of 1869, themselves seemed to have shared in this mistaken idea, as appears from the recital of the Act

less arising from the fact that the University is known to have received and to hold State bonds.

The fact is, however, as has been stated by our President, that "the State which gave it birth, and has undertaken to preside over its destinies, has given it, during three-quarters of a century, not one dollar of support, voluntarily and from its own Treasury.<sup>115</sup> Others have bestowed gifts upon it by permission of the State; it has been repeatedly the recipient of Congressional or Federal aid," which the State has merely transmitted, "but the State itself has never once put its hand into its own vaults and drawn hence a gift for this child of its creation. The interest paid the University \* \* \* by the State is not a gift, but merely rent for the use of funds, which the State pays and would be required to pay to any other," owner of its bonds. "The only money now received by the University from the State treasury is this interest money paid in settlement of coupons cut from bonds which she holds, just as any private person might hold them."<sup>116</sup>

The University, however, as I have said, does not complain of the conditions attached to the vesting in her of the appropriation for the Agricultural College; on the contrary, she rejoices in the fact that her halls have been officially set apart for the free education of the youth of the State, as well as in the fact that in the same Act of 1869 the State made the Governor and other high officials ex-officio members of her Board of Trustees, and added to the Board six new Trustees from Middle and West Tennessee,<sup>117</sup> because these provisions marked

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that the University receives "its foundation and endowments by the munificence of the United States Government and that of the State Government." (Appendix H, sec. 10.)

115. There was, of course, the indirect gift of the lands of the Western District.

116. Quoted from report of Dr. Charles W. Dabney, Trustees Report, cited in Note 113, supra, p. 39.

117. Appendix H, secs. 8 and 11.

the fact, so full of glorious meaning, that the University had become essentially the State University and the official head of its educational system.

Shortly after the passage of the Act of 1869 the Trustees accepted the trust which it imposed and agreed to establish the Agricultural College. They at once took steps to carry out the provisions of this Act, and in May of the same year were able to notify the Governor that they had complied with all the conditions of the appropriation. In June the Board organized the Industrial College, and in September following it went into operation.<sup>118</sup>

I regret that I must again pause, while dwelling on these auspicious events, to note the fact that even under the Act of 1862, the State has been in certain particulars unfaithful to its trust.

The first instance apparently originated in carelessness. Both the Acts of Congress and of the State had specifically provided that all expenses incurred in the sale of the scrip and investment of its proceeds should be paid by the State out of its own Treasury.<sup>119</sup> Nevertheless, in spite of these plain provisions, the State, in

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118. See White's *Early History of the University*, p. 118, and chapter on the "University of Tennessee" in Merriam's *Higher Education in Tennessee*, p. 71. This chapter was written by Prof. T. C. Karns, and is a scholarly contribution to the history of our University, fittingly supplementing as to the later period the work done by Col. White for the earlier. I am indebted to Prof. Karns' article for most of the information gathered as to the history of the University since the Civil War.

119. The act of Congress had contained this express provision, to the end that "the entire proceeds of the sales of said lands shall be applied without diminution whatever" to the endowment of the Colleges (Appendix G, Sec. 3), and the Tennessee Legislature had directed in the Act of 1868, accepting the Congressional grant, that all the costs and expenses incurred in obtaining and settling the land scrip and investing the proceeds in bonds should be paid out of the State treasury." Acts of 1867-68, chap. 32, p. 33.

1868, allowed items aggregating over thirty-three hundred dollars, for brokerage fee, express charges and other expenses incurred in selling the scrip and buying the bonds,<sup>120</sup> to be deducted from the proceeds of the scrip, retaining also in her own hands a cash balance of over four hundred dollars, that had remained unexpended. The amount of these expenses and cash balance was not paid over to the University until 1881, and then without interest,<sup>121</sup> so that the University lost on these two items the interest for about eleven years, or roundly speaking, about twenty-two hundred dollars.

But far more serious, and without justification, was the conduct of the State in regard to the payment of the interest on the State bonds, constituting the endowment in which the Agricultural fund had been invested.

The Act of Congress had provided that the proceeds of the sale of the scrip should be invested in "stock of the United States, or of the State, or some other safe stocks \* \* the interest of which shall be inviolably appropriated \* \* to the endowment, support and maintenance of the College," and the State itself, under its Act of 1868, had directed that the interest on the bonds should "be paid over semi-annually."

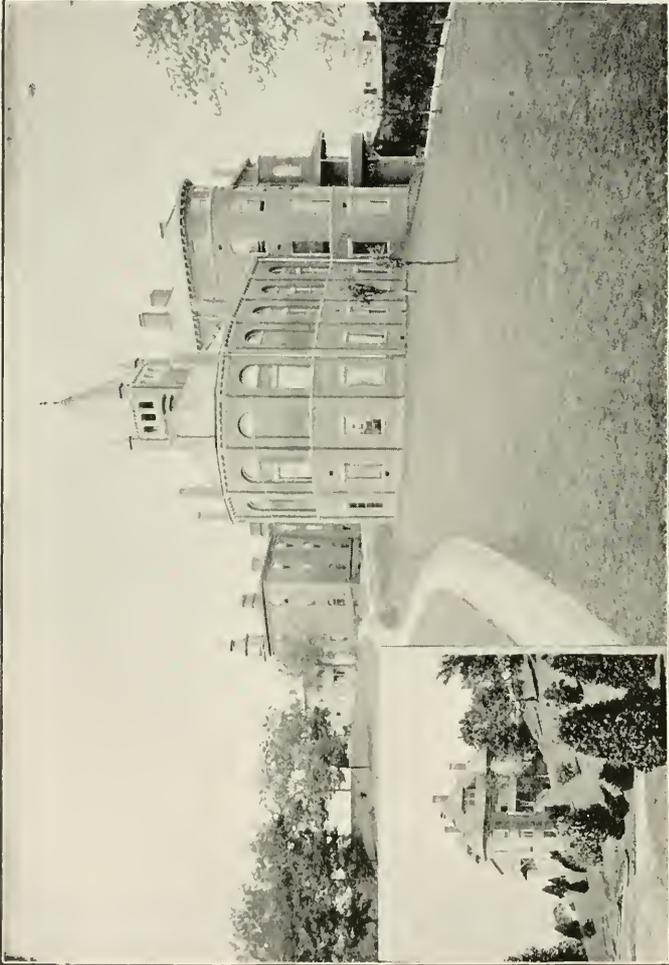
Nevertheless, impartial history must relate the fact, though she fain would drop a tear to blot out the record, that in spite of this sacred obligation to preserve inviolable the interest on this fund, again and again,

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120. From a memorandum entitled "Manhattan Company of New York, in account with Agricultural College Scrip," now in possession of James Comfort, Esq., treasurer of the University, and written, as he informs me, by the late Robert Craighead, a former treasurer, it appears that the Manhattan Company sold 1,875 pieces of scrip for the State and bought \$396,000 bonds with the proceeds, after deducting the following items: \$3,292.80 expenses of counter-signing, affixing seal, etc.; \$420.75 expressage; and \$495 commissions, making total expenses of \$4,208.55, and leaving a cash balance of \$466.45.

<sup>121</sup>. Chapter 43, Acts of 1881, p. 52, passed November 28, 1881.





Y. M. C. A. BUILDING

SCIENCE HALL.

especially in the years just after the establishment of the Industrial College, when the University's Treasury was well nigh depleted with the drains made upon it in complying with the conditions of the appropriation, and when most of all the Agricultural College needed support and maintenance, the State not only repeatedly and injuriously delayed the payment of the interest on its bonds, oftentimes forcing the University to borrow money to meet its current expenses, but when it did pay, frequently paid, not in cash, but in depreciated State warrants, which the University was obliged, at great loss, to peddle upon the open market for what they would bring.<sup>122</sup>

The Treasurer's report shows that between the years 1873 and 1877 the University lost over twelve thousand dollars by this payment in depreciated warrants alone.<sup>123</sup>

In 1875 the Legislature appointed a committee to inquire into this matter, but nothing was ever done; no reparation has as yet been made to the University.<sup>124</sup>

The State is bound by every principle of simple justice, and of trust obligation to make good this loss to the University. It is furthermore under strict legal obligation so to do by virtue of the provision in the Act of Congress that "if any portion of the fund invested \* \* or any portion of the interest thereon shall, by

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122. Moses White's *Early History of the University*, page 48; Prof. Karns' chapter on the University of Tennessee; Merriam's *Higher Education in Tennessee*, page 74.

123. The exact amount was \$12,122.87. Stated by Dr. Dabney, *Biennial Report of Trustees*, cited in Note 113, *supra*, p. 50.

124. The committee was required to investigate both the matter of the expenses deducted from the proceeds of land scrip and the failure of the State in payment of interest, and to obtain the opinion of the Attorney General of the State as to whether the State had fully performed its obligation. (Resolution No. 33, adopted Feb. 15, 1875, *Acts of 1875*, p. 298). Nothing was done in regard to the expenses until partial compensation was made, as we have seen in 1881, and nothing whatever in regard to the interest.

any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest thereon shall be regularly applied, without diminution" to the support of the College.<sup>125</sup>

Financial trouble at the time may, perchance, be urged in palliation of the conduct of the State in these matters; but this reason can no longer delay the making of reparation.

It is a relief to turn from this melancholy page to the story of that auspicious year of 1879, ever memorable in the history of our University, in which the Legislature, by changing her name to the "University of Tennessee,"<sup>126</sup> giving her the proud privilege of bearing the name of the State, and by also providing for the more general distribution of the Trustees throughout the entire State, and for a Board of Visitors, three from each Grand Division of the State,<sup>127</sup> solemnly attested, under the Great Seal of State, that the University had in name, as well as in fact, become the State University, of the entire State and for the entire State, and was no longer a mere academy of one of its geographical sub-divisions.

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125. Appendix G, sec. 5, sub-sec. 1.

126. Chap. 75, Acts of 1879, p. 88, passed March 10, 1879. Cumberland College had failed to obtain this privilege in 1826. See Merriam's Higher Education in Tennessee, p. 31.

127. Resolution No. 33, adopted March 24, 1879 (Acts of 1879, p. 338). This Act provided that no further vacancies should be filled in the Board of Trustees until the number should become reduced under thirty, and that in filling subsequent vacancies preference should be given to Congressional districts not represented in the Board, until each district should have at least one representative. (Sec. 1).

In a resolution adopted by the Legislature January 24, 1893, it is stated that the appointment of the Board of Visitors has lapsed, and is no longer necessary on account of the election of the Trustees from the different Congressional districts. (Senate Joint Resolution No. 19, Acts of 1893, p. 459.)

We also rejoice in the fact that in this same year the Legislature, by providing for the appointment of State students in the University, by public examinations of the candidates for scholarships under the supervision of the superintendents of public schools of the various cities and counties, and the selection of the appointees from the candidates thus qualified,<sup>128</sup> took the last and most important step in bringing the University into harmony with the public school system of the State, making the University what it should be, the cap-stone of the public school system of the entire State, drawing its support from the public schools, on the one hand, and, on the other, forming the natural complement to the education of these schools.

Small wonder it was that at the commencement exercises of 1879 the inaugural ceremonies of the new "University of Tennessee" were celebrated with much pomp and ceremonial in connection with the installation of the distinguished Board of Visitors that had been appointed by the Governor.<sup>129</sup>

The two subsequent Acts of Congress, the so-called Hatch Bill of 1887, by which an annual appropriation of fifteen thousand dollars was made to establish Agricultural Experiment Stations in connection with the various Agricultural Colleges in the different States,<sup>130</sup> to which

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128. Chapter 155, Acts of 1879, page 197, passed March 24, 1879.

129. See Prof. Karns' Chapter on University of Tennessee, Merriam's Higher Education in Tennessee, page 81. The inaugural address was delivered by Dr. Humes, President of the University, the installation address by Gov. A. S. Marks, and the reply by the Hon. Z. W. Ewing. It was during these exercises that Colonel White delivered before the Alumni the address on the Early History of the University, from which I have so often quoted, and that a poem was read by the Rev. J. H. Martin.

130. Act of Congress, approved March 3, 1887; 24 United States Statutes at Large, page 440. See also Prof. Karns' article, Merriam's Higher Education in Tennessee, page 89.

the Tennessee Legislature assented in the same year, authorizing the University to accept the grant upon condition that it should carry out all the provisions of the donation,<sup>131</sup> and the so-called New Morrill Act of 1890, by which an additional appropriation was made out of the sale of the public lands to the land grant colleges established in the various States, beginning with fifteen thousand dollars annually, and increasing one thousand dollars each year until it reaches twenty-five thousand dollars annually,<sup>132</sup> to which Act the Tennessee Legislature also assented,<sup>133</sup> have but served to increase the solemn obligation of the University to the National Government, to fulfill in its Agricultural College the purpose of these gifts, and to faithfully maintain the College as one whose leading object shall be to “teach such branches of learning as are related to agriculture and the mechanic arts \* \* \* in order to promote the liberal and practical education of the industrial classes.”

Abraham Lincoln is, I believe, quoted as having said that the Lord must love the common people best since

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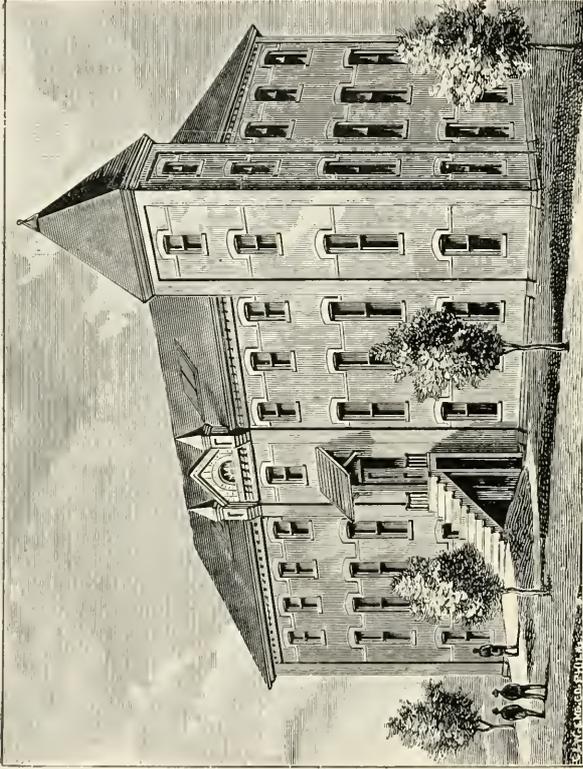
131. Chapter 220, Acts of 1887, p. 352, passed March 28, 1887. See also Prof. Karns' article, Merriam's Higher Education in Tennessee, page 89.

132. Acts of Congress, approved August 30, 1890; United States Statutes, 1889-90, p. 417.

By Section 1 of this Act it is provided that this additional appropriation shall be used only for “instruction in agriculture, mechanic arts, the English language, and the various branches of the mathematical, physical, natural and economic sciences, with special reference to their applications in the industries of life, and to the facilities for such instruction.”

133. Prof. Karns' article, Merriam's Higher Education in Tennessee, p. 100. Chap. 36, Acts of 1891, passed February 20, 1891. By this Act the Tennessee Legislature assents to the Act of Congress, and provides that the additional grant shall be committed to the Trustees of the University “as a part of the endowment and support of the college for the benefit of agriculture and the mechanic arts, established by contract of this State with the Trustees of the University of Tennessee.”





MECHANICAL BUILDING.

He has made so many more of them. It is the "common people" whom these agricultural colleges are intended primarily to reach; the industrial classes who constitute the strength and bulwark of the State. By the wise legislation of Congress, supplemented by the wise legislation of the State, bringing the University of Tennessee into close harmony with the public school system, it is the manifest destiny of the University to give an education to every industrious youth within her borders who shall deserve it and desire it.

The correct aim of the University is nowhere so well expressed as in the words of Dr. Charles W. Dabney, the forceful thinker and capable executive to whose revivifying energy and ability the University owes so much of its present prosperity, who in speaking of the objects of this class of colleges as expressed in the Act of Congress, says: "As interpreted by the best authorities and illustrated by the best institutions," the language of the Act "means that these colleges are to teach the sciences, and train the youth in the methods, of the two great producing industries, farming and manufacturing, including planting, stock raising, mining, engineering, both mechanical and civil, and general business. They were to be polytechnic institutes, not mere manual labor or industrial schools—though scientific men, engineers and farmers should all be trained to work with their hands—but schools of the natural sciences, of engineering and technology; not schools to train farm laborers, miners, mechanics, and mere artisans, for these can be trained best on the farm, in the mine, or the shop, but institutes for the *education*, in the broadest sense of that word, of the future scientific agriculturist, the mining engineer and metallurgist, the mechanical engineer and the manufacturer, of our country."<sup>134</sup>

The University authorities believe with Dr. Dabney

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134. Trustees' Report, cited in note 133, supra, p 51. Also quoted by Prof. Karns, Merriam's Higher Education in Tennessee, p 91.

that the best resource of the South is its people, that the best way to develop its wealth is to develop the capacities of its people; to train and educate our own youth so that we shall not need to import foreign engineers, foreign mineralogists and other foreign men of science, but shall obtain from among our own chosen youth those who shall lead in our industrial future. These schools protest that the South, in ante bellum days, in the education of her favored sons, devoted her attention too exclusively to classic literature and the polite arts, and that it is folly to continue as Huxley says: "in this age of full modern artillery to turn out our boys to battle in it, equipped only with the sword and shield of an ancient gladiator."<sup>135</sup>

It would be inappropriate for me to fail to-day to make some reference to that formidable enterprise which was undertaken with such fear and trembling and reluctance one year ago: the admission of blue eyes and rosy cheeks within the academic halls. We have had one year's experiment. The reports of the professors, if they have not been bewitched by the brightness of those eyes, indicate not only that Tennessee yet has daughters as bright and fair as charming Barbara Blount, and who, like her, are entitled to be classed as not only attentive, but also diligent, and also ingenious, but they, furthermore, indicate that the experiment has been most successful, and are full of encouragement to those who believe that the daughters of the State are entitled to be educated as thoroughly as her sons, and that the giving to them of this education, side by side with their brothers and the brothers of the other girls, will not detract from their feminine charms, nor deprive them of their graces, but will, on the contrary, in the generous rivalry of the schools, stimulate both the young men and women to higher excellence.

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135. Quoted by Dr. Dabney; Trustees' Report, 1887-88, cited in note 113, supra, p 52.

My tongue, however, doth not, I fear, trip easily in this new and double academic language, and if, in what I have yet to say, I shall fail to make mention of the young women every time I speak of the young men, I can only make the same apology as the preacher who had excited the ire of the female portion of his congregation by his apparent neglect of their sex in beginning his sermon simply: "My dearly beloved brethren," his justification being that "the brethren always embrace the sisters."

There is one anomaly in our University affairs of which this is also an appropriate time to speak, the fact that its Alumni have, as such, no voice or participation in its management. There is not, I believe, a successful large university in America in which this anomaly exists. I can speak with certain knowledge of but one—Harvard. There the Board of Overseers are elected by and from the graduates. It is certainly most fit and appropriate that part, at least, of the management of the affairs of a university should be entrusted to her sons, devoted to her by the ties of filial gratitude, and interested above all others in her welfare and prosperity; for who shall care for a mother, if not her sons?

It is a difficult thing to inspire Alumni enthusiastically to come to annual conclaves under the stimulus merely of dry speeches and equally dry dining. Let them feel that at their annual meetings they shall have some voice in the affairs of the University. We do not ask to control the University, but we respectfully urge that consent be given to some provision by which at least a certain proportion of future Trustees shall be selected from the Alumni and elected by them; and, mark my word, no step will ever be taken that will more redound to the prosperity of the University.

And now, before I close, may I be permitted to confess that while I believe that the opinions I have quoted

from Dr. Dabney are sound, and that our young men need, most of all, and especially at the present day, the education which he has outlined; yet, in my heart of hearts, I am glad that Congress, in defining the leading objects of our College, still retained the words, "without excluding \* \* \* \* classical studies."

I say this, because I believe that there comes from the study of the classics, and the familiar communion with the world's great thinkers which it involves, that rounded and symmetrical development of the entire mental man, which the mere specialist never gets, and which is essential to real strength, so that, in the end, it will often, if not generally, happen, that the broadly educated man will, even in practical things, outstrip the specialist in his own specialty. I cannot forget that Gladstone, greatest statesman of modern times, received the highest classical training that England's universities could give.

But I say this yet more earnestly because I do not believe the world is yet prepared to forget the classical literature, and because I believe that the youth who has been trained only in strictly scientific and technical pursuits, who has closed his ears to the beautiful songs of antiquity, who has refused to open his mind to the great thoughts of the world's great masters, as expressed in its deathless literature, even if he achieve material success, will yet miss the best of life; for he will never have walked in that "right path of a virtuous and noble education," of which Milton wrote, "so smooth, so green, so full of goodly prospects and melodious sounds on every side, that the harp of Orpheus was not more charming," and he will go down to his grave, not having heard the music that murmured all around him, nor seen the pictures of ineffable beauty that lay open in every noble book.

One word more and I am done. As the University to-day reviews her past history, her voice may well have





COL. MOSES WHITE, UNIVERSITY HISTORIAN.

the ring of triumph and achievement, for in spite of all obstacles, she has steadily been true to her ideal and faithful to her precious trust; she has ever kept trimmed and burning the lamp of learning and of scholarship.

She will start upon her second century as a victor that hath lived down all popular prejudice; exalted as the official head of the educational system of the State; the venerable and dignified institution, upon whose future, more than any other of the State, hangs the welfare of generations yet unborn; qualified in the amplest manner to give the very best education that the age affords; stronger than ever before; rich in students, but richer yet in wisdom and ripened experience; with bright visions of future usefulness before her eyes, as a great and magnificently equipped State University, whose ramifying influences shall extend into every village and hamlet within the border of the Commonwealth; who shall not only give to each youth that training for which he hath greatest need and which shall do him most valiant service, but shall also, ever faithful to her high calling, by her tradition and teachings, inspire her students with the ideal of those scholars described by Milton: "inflamed with the study of learning and the admiration of virtue; stirred up with high hopes of living to be brave men and worthy patriots, dear to God and famous to all."

And as our University shall train her youth in those pursuits that make for wealth, so too, as wealth shall be developed in the community, bringing with it, as it always does, well earned rest and more attention to the polite arts, to the graces and luxuries of life, to those things that lift life above mere money-getting and make it a thing of joy and beauty, it shall be that those arts which make for culture and refinement shall also keep their homes within the walls of our University, which shall ever be the abiding place, not only of that which is practical, but also of that which is ideal.

And so it shall come to pass that when the harmoni-

ous voices of all the universities in the land shall swell loud and triumphant the national anthem of true education, there will be realized the prophetic words of Emerson: "I see in all directions the light breaking. Trade and government will not alone be the favored aims of mankind, but every useful, every elegant art, every exercise of imagination, the height of reason, the noblest affection, the purest religion, will find their home in our institutions and write our laws for the benefit of men."



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### APPENDIX A.

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AN ACT for the Establishment of Blount College, in the vicinity of Knoxville.

WHEREAS, The legislature of this Territory are disposed to promote the happiness of the people at large, and especially of the rising generation, by instituting seminaries of education, where youth may be habituated to an amiable, moral and virtuous conduct, and accurately instructed in the various branches of useful science, and in the principles of the ancient and modern languages :

SECTION 1. *Be it enacted by the Governor, Legislative Council and House of Representatives of the Territory of the United States of America south of the river Ohio,* That the Reverend Samuel Carrick, Presi-

dent, and His Excellency William Blount, the Honorable Daniel Smith, Secretary of the Territory, the Honorable David Campbell, the Honorable Joseph Anderson, General John Sevier, Colonel James White, Colonel Alexander Kelly, Colonel William Cocke, Willie Blount, Joseph Hamilton, Archibald Roane, Francis A. Ramsey, Charles M'Clung, George Roulstone, George M'Nutt, John Adair, and Robert Houston, Esquires, shall be and they are hereby declared to be a body politic and corporate, by the name of the President and Trustees of Blount College, in the vicinity of Knoxville, and shall have perpetual succession and a common seal; and that they and their successors, or the President, and any four or more of them, by the name aforesaid, shall have and they are hereby invested with all legal powers and capacities to buy, receive, possess, hold, alien, and dispose of any property for the use and benefit of the college; and may sue and be sued, commence and prosecute any legal process or processes, and have the same instituted against them in any court of record in this Territory, in the most ample manner.

SEC. 2. *And be it enacted*, That the President of the College, with any four or more of the Trustees who may be present, shall be a Board of Trustees adequate to the transaction of business; and in the absence of the President, any five or more of the Trustees being met upon their own adjournment, shall choose a Vice-President, who shall act during the absence of the President; and that the President and each of the Trustees, before their entrance upon the actual execution of their office, or their being known as such in law, shall appear before some Justice of the Peace for the county of Knox, and shall take an oath faithfully to execute their respective offices, which shall be entered on the records of the College; and that the President, or any of the Trustees, shall have a right at any time to resign his office, by signifying such resignation in writing to the Board of Trustees; and that the Board of Trustees shall have power to remove from office the President or any of the Trustees, when they may think proper, and fill up any vacancies which may happen in the board, thro' the death, resignation, or removal of members, by electing others in their room.

SEC. 3. *And be it enacted*, That the Board of Trustees shall have full power to appoint a secretary, treasurer, professors, tutors, and all necessary officers for conducting the civil and literary concerns of the College, and to displace and supersede them at pleasure. They shall have power to meet upon their own adjournment, or upon a citation from the President or Vice-President; to examine the proficiency of the students; to confer the literary degrees of Bachelor and Master of Arts; to fix the seat of the College, and erect the necessary buildings in the vicinity of Knoxville; to make all laws and regulations which they shall judge

necessary for the good government of the College, and for promoting morality and virtue amongst the students, provided they be consistent with the laws of the United States: and they shall take effectual care that students of all denominations may and shall be admitted to the equal advantages of a liberal education, and to the emoluments and honors of the College, and that they shall receive a like fair, generous and equal treatment during their residence therein.

SEC. 4. *And be it enacted*, That the President, Vice-President, Professors, Tutors and Students of said College shall be exempted from all military duty, during their continuance as members of the college, except in a general invasion of the Territory.

WILLIAM BLOUNT, Governor.

GRIFFITH RUTHERFORD, P. L. C.

DAVID WILSON, S. H. R.

[The above is Chap. XVIII of the "Acts passed at the First Session of the General Assembly of the Territory of the United States of America, South of the river Ohio;" pp. 89 to 91. Passed September 10th, 1794. Reprinted in Vol. 1 of Edward Scott's "Laws of the State of Tennessee," at p. 504.]

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## APPENDIX B.

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HISTORICAL NOTE as to the controversy between the United States, Tennessee, and North Carolina, as to the ownership of vacant lands in Tennessee, and the right to perfect titles therein, with special reference to the Congressional Cession Act of 1806.

By various enactments from 1782 to 1784, inclusive, North Carolina, whose Western boundary then extended, subject to unextinguished Indian titles, to the Mississippi River, provided for the issuance to the soldiers and officers of her continental line, as compensation for their services in the Revolutionary war, of warrants of survey to be located in the western part of the State, in what is now Tennessee, on a tract reserved for that purpose around Nashville, known as the Military Reservation, or, if there was not sufficient tillable land in this reservation, then upon any other unappropriated lands in the State.<sup>136</sup>

In 1783 also, in order to redeem the large amount of specie certificates which she had issued to defray the expenses of the war and to dispose of her surplus western lands, North Carolina opened an entry taker's office, afterwards known as John Armstrong's office, for the entry of land west to the Mississippi River, except within

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136. Laws of North Carolina: Acts of 1782, Chap. 3; Acts of 1783, Chap. 3; and Acts of 1784, Chap. 19. Whitney's Land Laws, pp. 92 to 97. Scott's Laws, Vol. 1, pp. 257, 272.

a certain tract reserved for the Cherokees,<sup>137</sup> the price of the land being payable either in cash, specie certificates or certain other designated certificates.<sup>138</sup>

“ Nearly all the holders of specie certificates, and many others, embraced the provisions of the Act, and obtained incipient titles to lands to be laid out in the Western territory of the State, and to which grants were subsequently to issue. \* \* \*

“ In the month of December, in the year 1789, the State of North Carolina ceded to the United States all that portion of the Western territory which now constitutes the State of Tennessee. \* \* \* At the period of the cession many of the military land warrants of the officers and soldiers of the North Carolina line, had not been issued. Other claims were floating and unlocated to any particular spot or parcel of land, and their number and amount were unascertained. Many other claims had been located and entered upon particular spots or parcels of land, to the claimants of which no grant had issued, and thus the titles remained incomplete.”<sup>139</sup>

It was in view of this state of affairs that North Carolina in her Act of cession specifically provided, among other express conditions, that her officers and soldiers should have the right to lay off any lands to which they were entitled within the limits of the reservation already allotted them, and that if the reservation should not contain a sufficient quantity of lands fit for cultivation, such deficiency should be made up out of any other portion of the ceded territory; that when lawful entries previously made within the territory had not been perfected by grant, the Governor of North Carolina should, from time to time, perfect such titles; that all rights of occupancy and pre-emption should be preserved; and that all entries previously made in John Armstrong's office which interfered with prior entries, might be removed and located on any other part of the ceded territory. Subject, however, to the foregoing and other expressed conditions, North Carolina ceded to the United States all her right, title and claims “ to the sovereignty and territory ” of the ceded lands, and declared that they should “ be considered as a common fund for the use and benefit of the United States of America, North Carolina inclusive, and should be faithfully disposed of for that purpose, and for no other use or purpose

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137. See Note 31, *supra*.

138. Acts of North Carolina, 1783, Chap. 2; Scott's Laws, Vol. 1, p. 267; Whitney's Land Laws, p. 82.

139. Quoted from a very valuable committee report made to the United States House of Representatives, Feb. 9, 1826, by James K. Polk on the “ Application of Tennessee for a Grant of certain land.” Amer. State Papers, Public Lands, Vol. 4, p. 38.

whatever," one of the purposes of the cession, as expressed in the Act, being to give the United States further revenues for extinguishing the National debt.<sup>140</sup>

In 1796 Congress admitted Tennessee into the Union, the Act declaring her "to be one of the United States of America, on an equal footing with the original States in all respects whatever," but being silent as to the ownership or right of disposition of the vacant and unappropriated lands lying within the boundaries of the State.<sup>141</sup>

As might have been expected in this state of affairs, it was not long before a tripartite controversy arose as to the right of disposition of these lands.

North Carolina, even after the admission of Tennessee into the Union, actively "continued to exercise the powers which she had reserved to herself in the cession act, from its date in 1789 until the year 1803, and continued to issue grants and perfect titles to lands lying within the State of Tennessee, according to the reservation which she had made to herself in the act of cession."<sup>142</sup> It was not long, however, before Tennessee, in the exercise of her new sovereignty, began to assert title to the vacant land within her borders and to insist that North Carolina was exceeding her reserved powers.

The causes of the dispute between North Carolina and Tennessee, and the grounds of the contention on the part of Tennessee, are stated in a memorial made to Congress by the Tennessee Legislature, as follows:

"At the time this (cession) act was passed by North Carolina and accepted by the United States, the time limited by the laws of that State, within which the claimants of land were required to have their surveys finished and to procure grants, expired in the year 1792, and there was no reservation in said act of cession that North Carolina might enlarge the time of making surveys and issuing grants; and it would seem as if North Carolina had no other right to perfect titles on unsatisfied claims, except such as she could exercise within the time limited by her laws, which expired in the year 1792.

"The State of North Carolina, after the year 1792, discovered that from the Indian wars, and the unsettled state of the country, but small progress had been made towards completing and return-

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140. North Carolina Act of cession, passed December, 1789; Laws of 1789, Chap. 3. Whitney's Land Laws, p. 46. In the Act of Congress accepting the cession, approved April 2nd, 1790, the deed of cession which was dated Feb. 25, 1790, is set out in full: Scott's Laws, Vol. 1, p. 455; Whitney's Land Laws, p. 49.

141. Scott's Laws, vol. 1, p. 541; Whitney's Land Laws, p. 53.

142. Quoted from report by James K. Polk, cited in note 139, supra.

ing the surveys by her officers, and, being unwilling that her citizens should lose their claims, extended the time by different acts for making and returning surveys, until about the year 1800.<sup>143</sup>

“In the meantime the State of Tennessee was admitted into the Union, in the year 1796, as an independent State and her constitution accepted by the United States. Upon the admittance of this State into the Union, and the acceptance of her constitution, no condition was imposed which would deprive her of the right to the ungranted lands within her limits. Tennessee, accordingly, in the year 1799, asserted her right to the ungranted land as a consequence of her possessing an independent and sovereign government. The holders of warrants issued by North Carolina, she insisted, had no right to survey and obtain grants for lands unless these grants had been issued within the time limited by the laws of North Carolina when the cession from the State was made, in 1789; and that the United States had ceased to possess any right to the vacant land by not reserving her claim when Tennessee was admitted into the Union as an independent State.”<sup>144</sup>

The Tennessee Act of 1799 referred to in the memorial was an act passed January 5th, 1799, for the purpose of “establishing offices for receiving entries of claims for all vacant lands within the several counties of the State.”<sup>145</sup> This act was, however, never enforced by Tennessee, its operation being from time to time suspended by successive acts passed in 1799, 1801, 1803 and 1805.<sup>146</sup>

On November 1st, 1801, however, the Tennessee Legislature passed an act reciting that “it appears by communications made to this General Assembly, by the Senators of this State in the Congress of the United States, that the United States claim a right to dispose of the vacant and unappropriated soil within the limits of this State,” and, in order that a determination might be made whether the United States or Tennessee had this right, vesting the Senators and Representatives from Tennessee, or a majority of

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143. See Report of Committee of U. S. House of Representatives on “Claim of the United States to Lands in Tennessee,” communicated January 8, 1805, for an excellent digest of the principal North Carolina enactments from 1782 to 1802, inclusive, in regard to lands in Tennessee, including various extension acts. (Amer. St. Papers, Pub. Lands, vol. 1, p. 193.)

144. Memorial of Tennessee Legislature to Congress, asking an amendment to the Act of 1806, so as to give Tennessee authority to perfect all valid North Carolina claims on lands west and south of the Congressional line. Dated November 18, 1817. Communicated to the House of Representatives, December 29, 1817. Amer. State Papers, Pub. Lands, vol. 3, p. 287.

145. Acts of 1799, 2nd session, chap. 24; Scott's Laws, vol. 1, p. 621.

146. Acts of Oct. 23, 1799; Nov. 13, 1801; Nov. 7, 1803, and Oct. 18, 1805; Scott's Laws, vol. 1, pp. 657, 723, 778 and 859, respectively. See also Whitney's Land Laws, p. 93, note, with references.

them, "with full power and authority as agents on the part of this State to claim the absolute right of disposing of the vacant and unappropriated soil within the same, and to have the claim of the United States and the claim of this State examined and determined," and "in order to prevent all future disputes," authorizing them "to procure from the United States a relinquishment of their claim to said land, in such manner and upon such terms as to the said agents hereby appointed may deem proper."<sup>147</sup>

Pending the settlement of this dispute with the United States, the Legislature, by an act passed November 14, 1801, confirmed all prior lawful entries made and warrants and grants issued by North Carolina for lands in Tennessee, as reserved by the act of cession, and provided for the issuance of Tennessee grants on such North Carolina warrants as had not been ripened into grants, but at the same time laid a penalty of \$5,000 upon any person subsequently surveying any land in Tennessee "for the purpose of obtaining a title for such land from the State of North Carolina," and provided that any grant so obtained from North Carolina should not be admitted as evidence in the Tennessee courts.<sup>148</sup>

In 1802, the Tennessee Legislature adopted a joint resolution giving its Senators and Representatives instructions in regard to the dispute with the United States,<sup>149</sup> and on December 5, 1803, they submitted to Congress a written communication, in which they represented "that the State of Tennessee, being particularly desirous to preserve that harmony which hath hitherto happily subsisted between the United States and that State," had appointed them "commissioners, with full power to settle the disputes between the United States and said State, respecting the vacant and unappropriated lands lying within the limits of the State of Tennessee," and suggested the propriety of appointing commissioners on the part of the United States, with power to adjust and determine with them "all interfering claims of the United States and Tennessee to said vacant and unappropriated lands."<sup>150</sup>

The claim of Tennessee to these vacant lands rested solely upon the shadowy and untenable ground, already quoted from the memorial of the Tennessee Legislature, that having been admitted by Congress in 1796 as "one of the United States of America, on an equal footing with the original States, in all respects whatever,"

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147. Acts of 1801, chap. 39; Scott's Laws, vol. 1, p. 722; Whitney's Land Laws, p. 118.

148. Acts of 1801, chap. 2; Scott's Laws, vol. 1, p. 668.

149. See Recitals in Act of Congress of April 18, 1806, and other documents hereinafter referred to.

150. Communicated to the Senate December 5, 1803; printed in Amer. State Papers, Pub. Lands, vol. 1, p. 148.

the ownership of the soil had passed to her, by implication, as an incident of political sovereignty.<sup>151</sup>

The United States, on the other hand, insisted that the "territory of the lands" having been expressly transferred by North Carolina to the United States in 1789, subject only to certain specified conditions and reserved rights, as a common fund for the use and benefit of all the States in the Union, for the purpose of paying the national debt and otherwise, and Congress having never relinquished the title to the soil, either in the act admitting Tennessee into the Union or otherwise, this title still remained in the United States for the purposes expressed in the original cession, subject only to the rights and conditions specified in the cession, and that Tennessee, having been given no right of disposition of these lands in the act admitting her into the Union, this right was still retained by Congress.

It is needless to say that no Western State would, to-day, think of making the claim then made by Tennessee under similar circumstances, it being now familiar law that upon the admission of a territory as a State, the United States, nevertheless, retains title to all vacant lands within her borders, not expressly ceded to the State.

While this dispute between Tennessee and the United States was being arbitrated, Tennessee, in the meantime, endeavored to adjust with North Carolina the rights of that State within the borders of Tennessee, and by an act passed November 8, 1803, reciting that "justice, the genius of our confederated government, and the principles of intercourse which should govern sister States, require, that any difference of opinion between North Carolina and Tennessee respecting their essential interests should be terminated by friendly explanation and adjustment," appointed John Overton, Esq., as "an agent on the part of this State, to confer and agree with the Legislature of North Carolina, or such agent or agents as they might think proper to appoint, respecting the land titles of this State, or any circumstance or case relating thereto, and to make such agreement, compromise or stipulation with the said State respecting the same as may be necessary to do justice to the citizens of both States," such stipulation to become the law of both States when agreed to and enacted by their respective legislatures.<sup>152</sup>

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151. Thus it is stated in a report made to the U. S. House of Representatives. January 24, 1832, on the "Cession of the Public Lands in Tennessee," that the contention of Tennessee was "that with sovereignty the right of soil passed by the act of her admission into the Union, there being no reservation by Congress of that right in said act." (Amer. St. Papers, Pub. Lands, vol. 5, p. 552.)

152. Acts of 1803, chap. 82; Scott's Laws, vol. 1, p. 816; Whitney's Land Laws, p. 54.

By a subsequent act of the same session, outlining the duties of our agent and providing means for carrying his mission into effect, it was made "the duty of the said agent, if practicable, to settle the said differences conformably to the obligation of the law of nations by consulting the interests of both States."<sup>153</sup>

On December 22, 1803, the Legislature of North Carolina, as a result of John Overton's negotiations, passed an act, subject to the agreement and ratification of Tennessee, and to the assent of Congress, giving Tennessee "full power and authority to issue grants and perfect titles to all claims of lands" lying in Tennessee, which, under the terms of the North Carolina cession act of 1789, remained and were reserved to be issued and perfected by North Carolina "in as full and ample a manner as the State of North Carolina possessed the same," subject to certain specified conditions and restrictions, one of which was that North Carolina "reserves exclusively the right of issuing military warrants."

On August 4th, 1804, the Tennessee Legislature passed an act, agreeing to and ratifying the said act of North Carolina, "as an agreement between this State and the State of North Carolina, vesting this State with full power and authority to issue grants and perfect titles to all claims of lands lying in this State in as full and ample a manner as the said State of North Carolina possessed the same, to all intents and purposes whatsoever, anything to the contrary notwithstanding."<sup>154</sup>

However, the Committee of the United States House of Representatives, to whom the North Carolina act had been referred, recommended that Congress assent thereto only upon the express conditions that the same should not, in any manner, "affect or impair any right whatever, which accrued to the United States in virtue of "the North Carolina Act of Cession;" and, for the time being, Congress did not give its assent.<sup>155</sup>

In the meantime, however, pending these negotiations with North Carolina, our Representatives in Congress had continued to urge the claims of Tennessee to the vacant lands within her borders. On April 18, 1806, their efforts resulted in the act mentioned in the text (p. 24), whereby Congress, "for the purpose of defining the limits of the vacant and unappropriated lands in the

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153. Acts of 1803, chap. 81; Whitney's Land Laws, p. 54.

154. Scott's Laws, vol. 1, p. 831; Whitney's Land Laws, p. 55. This act contains the North Carolina act in full.

155. Report of Committee on "Claim of the United States to Lands in Tennessee," communicated to the House January 8, 1805. (Amer. St. Papers, Pub. Lands, vol. 1, p. 193, also giving the North Carolina act in full)

State of Tennessee, hereafter to be subject to the sole and entire disposition of the United States," established a certain specified line, running across the western part of the State, and afterwards known as the Congressional Reservation Line,<sup>156</sup> and provided "that upon the Senators and Representatives from the State of Tennessee, by an instrument signed and sealed by them respectively, making known, that in pursuance of the power in them vested," by the act of Tennessee of 1801 and the resolution of 1802, "they do, for, and in behalf of the State of Tennessee, and in consideration of the provisions made in this act, agree and declare that all right, title and claim which the State of Tennessee hath to the lands lying west and south of the lines hereinbefore established within the limits of the State of Tennessee, shall therefore forever cease, and that the lands aforesaid shall be and remain at the sole and entire disposition of the United States, and shall be exempted from every disposition or tax made by order, or under the authority of the State of Tennessee, while the same shall remain the property of the United States, and for the term of five years after the same shall be sold; which said instrument shall be approved by the Senate of the United States, and entered at large in their journal and deposited in the office of the Secretary of State," the "United States thereupon do cede and convey to the State of Tennessee, all right, title and claim which the United States have to the territory of the lands lying east and north of the line hereinbefore established, within the limits of the State of Tennessee subject to the same conditions as are contained" in the North Carolina Cession Act of 1789, "and the said State of Tennessee shall thereupon have as full power and authority to issue grants and perfect titles to all lands lying east and north of the before described lands, within the limits of the State, that the State of Tennessee might have, by virtue of the North Carolina Act of 1804, authorizing Tennessee to perfect titles to lands reserved by the Cession Act, to which said Act the assent of Congress is hereby given, so far as it is necessary to carry into effect the object of the said contract;" the Cession to Tennessee, being furthermore subject to various express conditions, among others the provisions recited in the text in regard to the appropriation of lands within the relinquished territory for the use of colleges, academies and schools, and the pre-emption rights of occupants south of French Broad and Holston rivers.<sup>157</sup>

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156. It was thus called "because all the lands on the south and west were reserved from entry, and exempt from claim by Tennessee." Opinion by Judge Caruthers, in case of *Goodman vs. Tennessee Mining Co.*, 1 *Head's Tenn. Reports*, p. 174.

157. 2 U. S. Statutes at Large, p. 381; also printed in *Land Laws of the United States*, vol. 2, p. 1094.

In July, 1806, Governor John Sevier called a special session of the Legislature, to take action in reference to the settlements with the United States and North Carolina. The following extracts from his message show clearly the spirit in which the Congressional claim was received, and the value put upon the relinquished lands, especially those south of French Broad and Holston, as well as the tenderness of sentiment then felt for the occupants in that region: "In compliance with request at the last session, I have deemed it expedient to convene the Legislature, in order to lay before them for their consideration, the Acts of Congress and State of North Carolina, together with the result of the mission of your agent to the latter, respecting the landed interest of the State of Tennessee. It must afford great satisfaction to discover this business brought so far towards a final and amicable adjustment with those governments. The proposed liberal modifications by the national legislature to our State, is such, if conceded to, I entertain no doubt, you will avail yourselves, will, in my opinion, ultimately ensure a permanent security in all its relations touching the claims of the State, and individual citizens holding lands under the laws of North Carolina, the basis on which the real property of this State has been derived. \* \* \* \* Among the very great objects you will have before you for legislative consideration, will be the situation and circumstance of the people settled on the south side of French Broad and Holston and west of Big Pigeon rivers. They are respectable and worthy inhabitants, who have suffered by Indian depredations in a manner too deplorable to relate—they are justly deserving the patronage and indulgence of a liberal and patriotic legislature; and I entertain every hope that the paternal care of the Assembly will be tenderly exercised towards such a deserving and worthy class of citizens. \* \* \* \*

The lands conceded to this State by the national government, especially those lying on the south of the French Broad and Holston, and West of Big Pigeon rivers, will alone, inevitably, in the course of no distant period, furnish the treasury with considerable and ample funds, sufficient to enable the government to facilitate all the desirable and beneficent improvements calculated for the happiness and prosperity of the most opulent and long established republics. No additional burdens of taxation need ever be required or imposed on our fellow-citizens, and we may safely contemplate, under the care of Divine Providence, with mild and salutary laws, on always continuing to be a free, happy and independent people. Very liberal and ample donations are now procured for the establishment and support of several of the most ornamental and instructive seminaries of learning. I am sensible of your good disposition to forward and promote so noble a work, and yield it all the aid and

dispatch within your power, and will readily discover the sooner the same can be brought into operation the greater will be the utility of such inestimable and useful institutions.”<sup>158</sup>

On September 6th, 1806, the legislature passed an act whereby it was enacted that the act of Congress of 1806, “be and the same is hereby accepted, ratified and confirmed to all intents and purposes by and on part of the State of Tennessee, and that the provisions thereof be carried into effect.”<sup>159</sup>

And on January 23, 1807, Tennessee’s Senators and Representatives in Congress, except Senator Joseph Anderson, who was absent, executed a written instrument, making known that in pursuance of the power vested in them by the Tennessee act of 1801 and the resolution of 1802, and in consideration of the provisions made in the act of Congress of 1806, they, “for and in behalf of the State of Tennessee, agree and declare, that all right, title and claim, which the State of Tennessee hath to the lands lying west and south” of the Congressional reservation line, within the limits of Tennessee, “shall hereafter forever cease, and the lands aforesaid \* \* \* shall be and remain at the sole and entire disposition of the United States, and shall be exempt from every disposition or tax,” as specified in the act of Congress. This instrument was approved by the United States Senate on February 17, 1807, and ordered to be entered upon the journal, the original to be deposited in the office of the Secretary of State.<sup>160</sup>

In a report made to the Tennessee Legislature in 1821, by the Committee on Education, in which the history of this cession is cited, the committee express “the belief that the cession of the vacant soil made to the State of Tennessee, north and east of the reservation, resulted as much from a spirit of compromise, and to quiet the conflicting claims of the parties concerned as from an act of grace on the part of the Government of the United States.” The only ground stated by them for the faith that was in them, was the fact that Tennessee had been admitted into the Union on an

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158. Governor’s message, submitted July 29, 1806 Senate Journal for 1806, p. 5.

159. Acts of 1806, chap. 10, p. 53; Scott’s Laws, vol. 1, p. 936; Whitney’s Land Laws, p. 58.

In this act the act of Congress is set out in full. It had been originally proposed to authorize the Senators and Representatives in Congress to execute the instrument of release provided for in the act of Congress, but this plan seems to have been dropped, (Senate Journal, July 29th and 30th, 1806, p. 8, et seq.), and the act of September 6th substituted therefor. On August 2nd, 1806, a resolution was adopted giving the thanks of the Legislature to their Senators and Representatives in Congress “for the faithful discharge of the trust imposed in them.” (Senate Journal, 1806, p. 15.)

160. This instrument is printed in full in Amer. St. Papers, Public Lands, vol. 1, p. 531, with the proceedings in regard thereto.

equal footing with the original States, supplemented by the peculiar argument that Tennessee had claimed these lands as early as 1798.<sup>161</sup>

There can in fact, however, be little doubt but that the United States had the better title, and that the cession was intended by Congress and accepted by the State more as a gift than as a compromise. This is indicated not only by the relative strength of their claims, and by the language of Governor Sevier's message, but by various incidental expressions of our judges and statesmen. Thus, in a decision of our Supreme Court, in the case of *Lowry vs. Francis*, 2 Yerger's Tennessee Reports, 538 (decided in 1831), Judge Catron states that the United States, before the cession, held the legal title to the public lands in Tennessee, and that Tennessee acquired the land east and north of the reservation line by the compact of 1806 (p. 537), subject to the conditions of the North Carolina session (p. 539), and in the case of *George vs. Gamble*, 2 Overton's Tenn. Reports, 170, at 172, Judge White, in delivering the opinion, states that the constitutional convention of 1796, were "aware that the United States would ultimately have the disposal of the vacant land within the State of Tennessee."

So, in a report made to the Legislature in 1837, by the select committee on the Ocoee district, referring to the lands in that district, which were part of the ceded lands east and north of the Congressional line, it is said that the title to these lands was ceded to the United States by North Carolina and "the title thereto remained in the General Government until 1806."<sup>162</sup>

The Congressional Reservation Line began where the main branch of Elk River crosses the southern boundary of the State; thence due north (following almost exactly the present line of the L. & N. R.R.) to Duck River (near Columbia); thence north-westerly, down Duck River, (nearly to Centreville): thence due west to the Tennessee River; thence northerly down the Tennessee River to the northern boundary of the State. It is sometimes called the Elk River Line, on account of the point of beginning. (Memorial of Tennessee Legislature, Amer. State Papers, Pub. Lands, vol. 3, p. 286.)

The territory west and south of this line, title to which was reserved by the United States (subject to unextinguished Indian titles), included all that portion of the State lying to the extreme west of the Tennessee River, and the territory east thereof comprised in the present counties of Hardin, Wayne, Lawrence and Lewis, and portions of Perry, Hickman, Maury and Giles.

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161. Report, November 1, 1821. Printed in Niles' Register, vol. 21, p. 299.

162. Report, submitted to Tennessee House of Representatives, October 30th, 1837. (House Journal, 1837-8, p. 800.)

The territory ceded to Tennessee, east and north of the line, comprised, broadly speaking, the eastern two-thirds of the State,<sup>163</sup> embracing, approximately, from sixteen to seventeen million acres, of which, after satisfying all North Carolina claims that were located east and north of this line, there remained unlocated in 1838, according to a memorial made by the Legislature of Tennessee to the Congress of the United States, about eight million acres, the most of which the memorialists declared, in language that sounds strangely enough to-day, "is mountainous, unfit for cultivation, uninhabited, and must be so for centuries." (Joint Resolution No. 1, passed Jan. 5, 1838, Acts of 1837-38, p. 443; Whitney's Land Laws of Tennessee, p. 522.)

There was, however, a considerable portion of the territory ceded to Tennessee lying in the south-eastern portion of the State, and mainly within the tract reserved by North Carolina in 1783 for the Cherokee Indians, to which the Indian title had not been, in 1806, extinguished, but as this territory, with other lands, was gradually ceded by the Cherokees in successive treaties made with them by the United States at the Cherokee Agency in 1817, at Washington City in 1819, and at New Echota in 1835, the benefit accrued to Tennessee by virtue of the Congressional cession of 1806, and the unencumbered title to the soil became gradually vested in the State.<sup>164</sup>

The territory obtained by the two treaties of 1819 and 1835 was created into the Hiwassee and Ocoee Districts of Tennessee, respectively.<sup>165</sup>

Immediately upon the acceptance of the Congressional cession the Tennessee Legislature authorized all the vacant land that had been ceded to her, except that south of French Broad and Holston, to be entered and granted for the purpose of satisfying the reserved North Carolina claims,<sup>166</sup> and kept open her offices continually for this purpose.

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163. This is the estimate given in 1821 by the Committee on Education in the report cited, *supra*. Note 40, p. 33.

164. See as to these and all other treaties with the Cherokees, a scholarly and extremely valuable paper by Charles C. Royce on "The Cherokee Nation of Indians," which is printed in the Annual Report of the U. S. Bureau of Ethnology for 1883-4, at p. 129 *et seq.* The treaties are printed in full both in Haywood & Cobb's Statute Laws of Tennessee and Whitney's Land Laws.

165. Acts of 1819, chap. 59; Acts of 1836, chap. 2; Whitney's Land Laws, at pp. 386 and 435, respectively.

166. Acts of 1806, chap. 1, passed Sept. 1, 1806 (Scott's Laws, vol. 1, p. 889). See, also, recitals in memorial of Tennessee Legislature to Congress, 1817. (Amer. St. Papers, Pub. Lands, vol. 3, p. 286.) Also memorial of 1836 (Acts of 1837-38, p. 443; Whitney's Land Laws, p. 522.)

In 1811, however, there being still many unsatisfied North Carolina claims, and most of the vacant arable land east and north of the Reservation Line having been granted, North Carolina, proceeding on the theory that since by the compact of 1804 she had only relinquished to Tennessee the right to perfect titles in Tennessee subject to the assent of Congress, and that Congress had in the Act of 1806 only consented to the compact so far as the territory east and north of the Reservation Line was concerned, she, therefore, still retained her original right to perfect titles west and south of this line, without requesting Tennessee to permit her to resume the power vested in Tennessee by the compact, passed an Act authorizing surveys to be made in Tennessee west and south of this line on her unsatisfied claims, and proceeded to perfect titles on such surveys. <sup>167</sup>

The first notice given to Tennessee "was the appearance of a surveyor to do the duties of his office." He proceeded at once to receive warrants and make surveys, and prior to October, 1812, North Carolina had issued grants for about 50,000 acres of the best land in Tennessee, lying west and south of the Reservation Line. <sup>168</sup>

At once the Tennessee Legislature passed a prohibitory Act declaring that the North Carolina Act was "not only a direct violation of the contract aforesaid, but an infringement of the right of sovereignty possessed by the State of Tennessee, declaring all grants issued under the North Carolina act to be void, forbidding them to be read in evidence in her courts, imposing a penalty of \$5,000 on any surveyor who should survey land under the North Carolina act, or register who should record such grant, and a fine of \$1,000 and disbarment for ten years upon any lawyer who should begin a suit upon such North Carolina claim. <sup>169</sup>

Thereupon North Carolina apparently desisted from her efforts to enforce the act of 1811. But about the year 1815 her Legislature presented a memorial to Congress claiming the right to perfect titles in Tennessee south and west of the reservation line, complaining against so much of the act of 1806 as authorized the appropriation by Tennessee of 200,000 acres for the use of colleges and academies, and seeking the partial repeal of the act of 1806. <sup>170</sup>

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167. See recitals in memorial of Tennessee Legislature, 1817, cited in note 144, *supra*, and in chap. 86 of the Tennessee Acts of 1812.

168. See recitals in memorial of Tennessee Legislature, 1817, cited in note 144, *supra*.

169. Acts of 1812, chapter 86, passed October 19, 1812; Scott's Laws, vol. 2, p. 99; reciting the substance of the North Carolina act.

170. See recitals in Memorial of Tennessee, 1817, cited in note 144, *supra*.

To this the Tennessee Legislature replied by a counter memorial in 1817, denying the right of North Carolina to perfect titles in any part of Tennessee, and protesting against the repeal of any part of the act of 1806, but stating that "all, or nearly all of the vacant land fit for cultivation" east and north of the reservation line had been already granted, leaving "yet remaining many warrants unsatisfied" without land out of which to satisfy them, and praying Congress to pass an act supplemental to the act of 1806, authorizing Tennessee to perfect unsatisfied North Carolina claims out of any vacant land south and west of the reservation line. In this memorial Tennessee insisted that North Carolina had no cause to complain of the "liberality of the United States" in regard to the appropriation for the colleges and academies, upon the ground that as no North Carolina statute had ever authorized grants to issue south of the French Broad and Holston, and Tennessee had, by the North Carolina act of 1803, been prohibited from issuing grants in this territory, the permission given by Congress to Tennessee to make an appropriation for the support of educational seminaries in this territory was no injury to the citizens of North Carolina.<sup>171</sup>

The cession act of 1806 had contained the express proviso that if the territory ceded to Tennessee "shall not contain a sufficient quantity of land fit for cultivation, according to the true intent and meaning of the original (North Carolina) act of cession, including the lands within the limits reserved by the State of North Carolina to the Cherokee Indians, to perfect all legal existing claims charged thereon, by the conditions contained in this act of cession, Congress will hereafter provide by law for perfecting such as cannot be located in the territory aforesaid, out of the lands lying west and south of the before described line."<sup>172</sup>

Accordingly, on April 4th, 1818, "after the Indian title, by a treaty made with the Chickasaw tribe of Indians, had been extinguished to all that portion of the country south and west of the Congressional reservation line, to which that tribe had previously claimed title, and over which they exercised dominion," Congress passed an act authorizing Tennessee to issue grants and perfect titles within the territory south and west of the reservation line to all valid special entries and locations that had been made in this southwestern territory under North Carolina laws prior to the deed of cession, and also to issue grants within said territory on all valid warrants of survey, interfering entries, certificates, grants and locations that had not been actually located or granted east and

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171. Memorial of 1817, cited in note 144, *supra*. American State Papers, Public Lands, vol 3, p. 286.

172. Act of Congress, 1806, cited in note 157, *supra*.

north of the reservation line, and that were removable under the North Carolina cession act, in the same manner as Tennessee then issued grants to lands east and north of said line. This act made no provision similar to that of 1806 for the benefit of children's schools.<sup>173</sup>

In pursuance of this act of Congress, Tennessee, in 1819, opened a land office for the satisfaction of all valid North Carolina claims south and west of the reservation line, the time for the adjudication and satisfaction of such claims being extended in 1821, 1823, 1827, and from year to year thereafter until 1839.<sup>174</sup>

In 1825 the Tennessee Legislature memorialized Congress, representing that, owing to a large number of North Carolina claims which had to be satisfied out of the territory east and north of the Congressional reservation line, she had been able to set apart only 22,705 acres for her school fund instead of one thirty-sixth part of the entire territory, as contemplated by the cession act of 1806, (see note 30, p. 26, *supra*), and requesting Congress to cede to her the remaining vacant land south and west of the reservation line for the purpose of making good her school fund, pledging the State to appropriate the lands to this purpose.<sup>175</sup>

But although Mr. Polk, as chairman of the select committee to whom these memorials were referred, recommended that they be granted, and reported a bill to that effect, no action was taken.<sup>176</sup>

From a report made by S. T. Ingram, Secretary of the Treasury, to the United States House of Representatives in 1830, based upon a report of the Commissioner of the general land office, and a letter from Daniel Graham, the Secretary of State of Tennessee, it appears (there being slight discrepancies in the figures as given by the different officials, and also errors in their calculations), that the total area south and west of the reservation line was estimated at 6,840,000 acres, of which 942,375 acres had been granted by North Carolina previous to the cession of 1789, and 3,567,801 (or 4,567,801) acres had been adjudicated by Tennessee since the act of 1818, leaving, subject to the disposition of the

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173. 3 U. S. Stat. at Large, p. 416; Land Laws of the United States, vol. 2, p. 1096; Whitney's Land Laws, p. 521. See also committee report made by James K. Polk to U. S. House of Rep., Feb. 9, 1826, on "Application of Tennessee for a Grant of Certain Lands. (Amer. St. Papers, Pub. Lands, vol. 4, p. 381.) In note 139, *supra*, this citation is erroneously given as p. 38.)

174. See recitals in Polk's committee report, cited in note 139, *supra*, and in memorial of Tennessee Legislature, 1828, cited on p. 96, *supra*. In note 166 on said page, it is referred to, by a typographical error, as the memorial of 1826.

175. See recitals in Polk's committee report, cited note 173, *supra*.

176. See Polk's report, Amer. St. Papers, Pub. Lands, vol. 4, p. 381, cited in note 173, *supra*.

United States, 2,353,824 (or 3,353,824) acres of unappropriated lands, which were supposed to be of little value, Daniel Graham estimating that one-twentieth of them could be sold at 12½ cents an acre and one-fifth at one cent.<sup>177</sup>

Mr. Polk said of this vacant land: "Twelve and a half cents per acre is believed to be a fair price for much the greater portion of it that is worth appropriating at any price. Much of it consists of barrens and hills that are not worth the annual taxes required to be paid by the State, and will not be taken up at all."<sup>178</sup>

But although in 1830 and 1832, committees of the United States House of Representatives recommended a cession to Tennessee of the vacant land south and west of the reservation line for the purpose of creating a school fund,<sup>179</sup> and although, in a memorial of the Tennessee legislature, in 1838, Tennessee offered to refund to the United States all sums the State might receive "over and above 643,961, the number of acres of school lands, deficit to the State (calculated on the basis of one section to every thirty-six), after paying the expenses necessarily incurred,"<sup>180</sup> such legislation was not enacted.

Finally, however, in 1848, Congress, finding that the remainder of the public lands would scarcely pay for the expense of sale, made Tennessee its agent for the disposal of all unappropriated lands south and west of the reservation line, authorizing Tennessee, after satisfying all valid North Carolina claims and pre-emption rights, to sell the residue, paying over the proceeds annually to the United States.<sup>181</sup>

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177. American State Papers, Public Lands, vol. 5, p. 355.

178. Polk's report, cited in note 173, *supra*. See also as to these lands, report of Richard Rush, Secretary of Treasury, Jan. 22, 1828, on "Description of the Public Lands in Tennessee," (Amer. St. Papers, Pub. Lands, vol. 5, p. 49.) See also statements of various persons acquainted with the land, and of U. S. Senators and Representatives from Tennessee, appended to report of Committee on Public Lands, on "Cession of the Public Lands in Tennessee," communicated to the House of Representatives, January 24, 1832, (Amer. St. Papers, vol. 5, p. 552.) This report, by Mr. Wickliffe, gives an admirable historical statement of the legislation of Congress in regard to lands in Tennessee. In this report the balance of vacant lands is stated at 3,353,824 acres.

179. Amer. St. Papers, Pub. Lands, vol. 5, pp. 428 and 552, respectively.

180. Memorial, 1838, cited note 174, *supra*. Whitney's Land Laws, at p. 238

181. Act of Congress, approved February 18, 1841; 5 U. S. Stat. at Large, p. 412; Land Laws of the U. S., vol. 2, p. 1007; Donaldson's Public Domain, p. 483; Whitney's Land Laws, p. 283. In 1840 the Tennessee legislature had instructed their Senators in Congress and requested their Representatives "to use their most earnest exertions to procure the passage of a law authorizing the State of Tennessee to dispose of the vacant lands lying south and west of the Congressional Reservation Line." (Resolution No. 14, 1840; Whitney's Land Laws, p. 283.)

And at length, after two memorials from the Tennessee legislature to Congress, in 1844 and 1845, respectively, <sup>182</sup> by act of Congress, passed August 7th, 1846, the United States released and surrendered to Tennessee, subject to valid North Carolina claims, all unappropriated lands within the State, together with the proceeds of such as had already been sold, providing, however, that out of the proceeds Tennessee should apply \$40,000 towards a college at Jackson, Tennessee. <sup>183</sup>

## APPENDIX C.

HISTORICAL NOTE as to the legislation and treaties of North Carolina, the United States and the Government of Franklin, in regard to the Indian boundary line so far as relates to the territory embraced in the tract reserved by North Carolina for the Cherokees in 1783.

So early as 1777, by a treaty held at Fort Henry, near the Long Island of the Holston, between commissioners of North Carolina and the Cherokee Indians, there had been established, as the boundary between the whites and the Indians, an irregular line running across the northeastern corner of the State, midway between the present sites of Greeneville and Jonesboro, the Cherokees retaining title to all lands south and west of this line, and the whites being forbidden to build, plant, improve, settle, hunt, or drive stock below it. <sup>184</sup> This treaty was transmitted to the North Carolina legislature but never recorded or formally ratified. <sup>185</sup>

In November, 1777, the North Carolina legislature passed an act establishing Washington county, with the present boundaries of the State of Tennessee, extending westward to the Mississippi, without any reservation as to Indian boundaries. <sup>186</sup> At this same session an act was also passed establishing offices for the entry of lands in all the counties of the State. <sup>187</sup> Under this act various entries were made in Washington county southwest of the Indian boundary line as fixed by the treaty of 1777. <sup>188</sup> Accordingly, the

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182. Resolution No. 36, adopted January 10, 1844, and memorial No. 1, adopted December 4, 1845; Whitney's Land Laws, pp. 530 and 298, respectively.

183. 9 U. S. Statutes at Large, p. 66; Land Laws of the U. S., vol. 2, p. 1098; Whitney's Land Laws, p. 301.

184. Haywood's History of Tennessee, p. 501; Royce's article on "Cherokee Nation of Indians," in Bureau of Ethnology Report, cited in note 2, *supra*, at p. 150.

185. Haywood, p. 63.

186. Acts of North Carolina, 1777, chap. 31; Scott's Laws, vol. 1, p. 221; Haywood, p. 69.

187. North Carolina Acts, 1777, chap. 1; Scott's Laws, vol. 1, p. 259.

North Carolina legislature, in April, 1778, passed an amendatory and so-called explanatory act, forbidding for the future any person "to presume to enter or survey any lands within the Indian hunting grounds, or without the limits of the land heretofore ceded by the Indians or conquered from them, which limits westward" were declared to be the boundary line established by the treaty of 1777 (though without naming it), declaring all entries and surveys which had been, or might be made within the Indian boundaries to be utterly void, and ordering the entry takers to refund all monies previously paid them for the purpose of obtaining such entries.<sup>189</sup>

In 1781, the further entry of land was forbidden.<sup>190</sup>

But, in 1783, the act of 1781 was repealed, and by an extraordinary exercise of arbitrary power, perhaps based upon the idea of actual conquest, without consultation with the Cherokees, or so much as saying by your leave, and in violation of the treaty of 1777 and the act of 1778, the western boundary of North Carolina was declared to be "enlarged and established" so as to extend westward to the Mississippi river, there being, however, "reserved" unto "the Cherokee Indians and their nation forever" all the territory in the present State of Tennessee, lying west of the Big Pigeon river, south of the French Broad and east of the Tennessee, together with some lands in the present State of North Carolina. By this arbitrary exercise of power by which North Carolina attempted, as it were, to make a treaty by its own legislative fiat, the Cherokee possessions were reduced to one-tenth of the area conceded to them by the treaty of 1777 and the act of 1778. In this act North Carolina forbade all persons, under heavy penalty, from entering or surveying lands within the bounds set apart for the Cherokees, or from purchasing, leasing or taking any gift of lands therein from the Indians, declaring all such entries, grants thereupon, purchases, leases and gifts to be utterly void, and forbidding, under heavy penalty, the whites from hunting, ranging, or driving stock within the Indian lands.<sup>191</sup>

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188. Haywood, p. 70.

189. North Carolina Acts, 1778, chap. 3; Scott's Laws, vol. 1, p. 224; Haywood, p. 70.

In an "address and remonstrance" of the Tennessee legislature to Congress in 1797, it is said: "It is believed that, by this act and line, \* \* \* \* no relinquishment of right of territory is made, but that the said line was declared for certain political reasons." It is also insisted in this memorial that if the Indians have any kind of claim to the land it is believed to be of the lowest kind of tenancy, namely, that of tenants at will. (Amer. St. Papers, Indian Affairs, vol. 1, p. 625.)

190. North Carolina Acts, 1781, chap. 7, sec. 7; Scott's Laws, vol. 1, p. 255.

191. North Carolina Acts, 1783; Scott's Laws, vol. 1, p. 267; Whitney's Land Laws, p. 82.

This arbitrary action on the part of North Carolina, in reducing the Indian boundaries, was undoubtedly largely the cause of the subsequent Indian hostilities.<sup>192</sup>

In spite, however, of this legislation, white settlers, as stated in the text (page 28), persistently encroached within the boundaries even of the "reservation," especially in the territory south of the French Broad and Holston. Thus, in 1784, the Indian agent, Joseph Martin, writing of the encroachment of the whites, gradually extending closer and closer to the Indian towns that lay along the southern shore of the Little Tennessee river, said: "The people from franklyn have actually settled or at least built houses within two miles of their beloved town of Chota, one of their principal towns. \* \* \* There has a number of families moved (on Little river) and talk of Building forts, and Say they will Hold it in defiance of Every power."<sup>193</sup>

In 1785 the revolutionary State of Franklin negotiated a treaty with the Cherokees at Dumplin Creek, beginning May 31st, at which the Cherokees ceded to the whites all lands lying "east" (north) of the ridge dividing the waters of Little river and the (Little) Tennessee, this being followed by a quasi treaty between the State of Franklin and the Cherokees, held at Chota Ford and Coytoy, beginning July 31st, 1786, at which, under threats of virtual extirpation, the Indians gave up all their lands north of the (Little) Tennessee river and west to the Cumberland mountain.<sup>194</sup>

These Franklin treaties were, of course, not recognized by North Carolina. They were furthermore virtually repudiated by the United States in the treaty held at Hopewell on the Keowee, November 28th, 1785, by which also the North Carolina act of 1783 was utterly abrogated, the boundary line between the Cherokees and the United States in East Tennessee being declared to be an irregular line running across the northeastern part of the State from Cumberland Gap, and passing between the present sites of Jonesboro and Greeneville.<sup>195</sup> In a "talk" made during the negotiation of this treaty by the Cherokee chief, Old Tassel, the Beloved Man of Chota, he stated that the whites had already settled on Little river

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192. See Royce's article, Bureau Ethnology Report, p. 151; also article by Prof. Weeks on "General Joseph Martin and the War of the Revolution in the West," (cited in note 33, p. 29), at page 44.

193. Quoted in Prof. Week's article, American Historical Association Report, page 444.

I use the word "reservation" in default of a better. It was merely a "reservation" *vi et armis*, and was never recognized by the Cherokees.

\* 194. For an account of these treaties see Ramsey's Annals of Tennessee, pp. 299 and 343, and Royce's article, Bureau of Ethnology Report, p. 152.

195. Royce's article, Bureau of Ethnology Report, p. 133.

and Nine Mile creek, nine miles from the Cherokee towns on the southern banks of the Little Tennessee river, and had marked out lands across the river from the town of Chota itself and in the fork of the Tennessee and Little Tennessee. <sup>196</sup>

In 1788, the Franklin Government having collapsed, and North Carolina failing to recognize or protect the people who had settled upon the Indian lands, they organized for themselves "a rude governmental machine, on the model of the Commonwealth of Franklin," which lasted until the formation of the territorial government in 1790. (Roosevelt's *Winning of the West*, vol. 3, p. 202.)

By the treaty of the Holston, made with the Cherokees by Governor Blount on the present site of Knoxville, July 2nd, 1791, and proclaimed February 7th, 1792, the Cherokees ceded to the United States in Tennessee, among other lands, all that portion of their "reservation" in Tennessee, lying north of a line, running from a point just above Kingston southeastwardly, passing near the present site of Maryville, to the State line. <sup>197</sup>

In a report made to Congress, November 10th, 1791, by Thomas Jefferson, then Secretary of State, on the unclaimed lands in the northwestern and southwestern territory, he states, in speaking of that portion of the lands south of the French Broad and Holston, which had been acquired from the Indians at the treaty of Holston: "They are supposed to amount to about three hundred thousand acres, and we are told that three hundred families have already set down upon them without right or license." <sup>198</sup>

The Cherokee boundary line, established by the treaty of Holston, was confirmed by the treaty concluded at Philadelphia June 26th, 1794, and proclaimed January 21st, 1795. <sup>199</sup>

By the treaty held in the Cherokee council house, near Tellico, concluded October 2nd, 1798, the Cherokees ceded to the United States, among other lands, all the remaining portion of their original "reservation" in Tennessee lying south of Hawkin's line and west of the Chilhowee mountains, except a small portion just west of the mountains on the north shore of Little Tennessee river, <sup>200</sup>

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196. Amer. St. Papers, Indian Affairs, vol. 1, p. 41.

197. 7 U. S. Stat. at Large, p. 339; Whitney's Land Laws, p. 17.

It must be remembered in reading this and other treaties that the Little Tennessee river was then considered the main branch of the Tennessee above the junction at what is now Lenoir City, and was called the Tennessee river, while the branch passing by Knoxville, now styled the Tennessee, was then called the Holston.

198. Amer. St. Papers, Pub. Lands, vol. 1, p. 18.

199. Whitney's Land Laws, p. 18.

200. Whitney's Land Laws, p. 20; Royce's article, Bureau of Ethnology Report, p. 174.

and also to something over 100,000 acres north of the river lying mainly in that portion of Blount county east of the Chilhowee mountains, perhaps partly also in Sevier, and in that detached portion of Monroe county which lies north of the Little Tennessee river and west of the Chilhowee. It was not in fact until the treaty concluded at Washington February 27th, 1819, proclaimed March 10th, 1819, that the Cherokees ceded to the United States, among other lands, the remainder of their "reservation" in Tennessee lying north of the Little Tennessee river, together with about one-half of their "reservation" south of the river, the land so ceded being afterwards established as the Hiwassee District of Tennessee. <sup>201</sup>

The remainder of the "reservation" was ceded to the United States by the treaty made at New Echota, December 29th, 1835, proclaimed May 23rd, 1836, by which, in consideration of \$5,000,000 the Cherokees conveyed all their lands east of the Mississippi river, this portion being afterwards established as the Ocoee District. <sup>202</sup>

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## APPENDIX D.

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HISTORICAL NOTE as to Tennessee enactments from 1799 to 1805, inclusive, in reference to occupant claims south of French Broad and Holston.

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In 1799, Tennessee had provided that these lands claimed by occupancy and pre-emption, should be subject to taxation. <sup>203</sup>

In this same year, in the act opening land offices for the general sale of land at twenty-five cents an acre, it had been expressly provided that the occupants south of French Broad and Holston should have preference of entry; <sup>204</sup> and in an act in 1801 these occupants had been authorized to locate certain North Carolina warrants on their improvements and obtain grants thereon. <sup>205</sup> But as will more fully appear by reference to historical note, Appendix B, *supra*, Tennessee never sought to enforce either of these acts.

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201. Whitney's Land Laws, p. 39; Royce's article, Bureau of Ethnology Report, p. 253. Acts of 1819, chap. 59; Whitney's Land Laws, p. 386.

202. Whitney's Land Laws, p. 40; Royce's article, Bureau of Ethnology Report, p. 253. Acts of 1836, chap. 2; Whitney's Land Laws, p. 436.

203. Acts of 1799, chap. 14, Scott's Laws, vol. 1, p. 620.

204. Acts of 1799, chap. 24; Scott's Laws, vol. 1, p. 624.

205. Acts of 1801, chap. 2; Scott's Laws, p. 668.

And so as to an act passed in 1805, "directing the mode of ascertaining the bounds of improvement and occupant claims" in this territory.<sup>206</sup> Sections 1 to 4 of this act are not contained in any of the compilations, and the original act is not in the Secretary of State's office, having been lost or destroyed; neither is there any printed copy in the State library. Section 5 provides for recording bills of sale of pre-emption rights in this territory, and section 6 forbids any surveys in this district or any warrants or entries on warrants for the purpose of obtaining grants (thus repealing the provisions of the act of 1801), and excludes from evidence any grant that may issue to these lands.

In the case of *Shields vs. Walker*, 2 Overton's Tenn. Reports, 114 at 116 (decided in 1811), it is stated by Judge White that "the first and perhaps the only material acts of Tennessee," in reference to persons entitled to preference south of French Broad and Holston, is chapter 1 of the acts of 1806, sections 1, 8 and 9.

Since writing the note 38 on page 32, *supra*, in which it is stated that the North Carolina Assembly of 1789 seems not to have opened an office for the entry of pre-emptions south of French Broad and Holston, under the power vested in the cession act, I have found it stated as a fact by Judge White, in this same case of *Shields vs. Walker*, that North Carolina "never did exercise that power;" that there had never been any North Carolina legislation prior to 1789 giving pre-emption rights to the settlers in this district; "and that so far from it, we find the legislature continually striving to reserve this country for the use of the Indians."<sup>207</sup>

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## APPENDIX E.

AN ACT to establish a College in East Tennessee.

WHEREAS it is provided by an act of the Congress of the United States, entitled, "An Act to authorize the State of Tennessee to issue grants to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same," passed the eighteenth day of April, one thousand eight hundred and six, that there shall be one hundred thousand acres of land laid off on the south side of Holston and French Broad, and west side of Big Pigeon rivers, to which the Indian claim had been

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206. Acts of 1805, chap. 72, passed Oct. 28, 1805; Whitney's Land Laws, p. 340; Scott's Laws, vol. 1, p. 386; Haywood's & Cobb's Statutes, vol. 2, p. 124.

207. 2 Overton, pp. 115 and 116. See also recitals in memorial of Tennessee Legislature, 1817, cited in note 144, *supra*.

extinguished; and that the proceeds of the sales of the said one hundred thousand acres of land should be appropriated in such way by the legislature of this state that the profits thereof should be applied to the support of two colleges in this state, the one in East and the other in West Tennessee, to be established by the legislature of this state; And whereas it is expedient that this General Assembly should establish a college in East Tennessee, capable of receiving that part of said donation, designed by said act to be given to the college to be established in East Tennessee aforesaid: Therefore,

1. *Be it enacted by the General Assembly of the State of Tennessee*, That there shall be thirty persons appointed by this General Assembly, who shall be, and hereby are constituted a body-politic and corporate, by the name of the "Trustees of East Tennessee College." And by that name shall have perpetual succession and a common seal. And the said trustees, and their successors, by the name aforesaid, shall be endowed with, and receive in such manner as the General Assembly of this state may from time to time direct, that part of the donation aforesaid, which was designed for the college in East Tennessee; and they shall by the name aforesaid, be capable in law, to purchase, receive and hold to them and their successors forever, or for any less estate, any lands, tenements, goods, or chattels, which shall be given, granted, or devised to them or purchased by them to the use of said college, and to use and dispose of the same, in such manner as to them shall seem most advantageous for the use of said college. The said trustees and their successors by the name aforesaid, may sue and be sued, plead and be impleaded, in any court of law or equity in this state or elsewhere.

2. *Be it enacted*, That no less than seven of said trustees shall constitute a board, to determine upon any matter relative to said college, nor shall any of the real or personal estate belonging to said college be disposed of or appropriated at any session of said board, except a stated session; nor shall any president or professor in said college, ever be chosen, except at a stated session of the board; but temporary appointments which shall expire with the next stated session after they are made, may be made at an adjourned or called session of the board.

3. *Be it enacted*, That the said trustees at their stated sessions, shall have full power and authority to elect a president, such professors, tutors, and other officers in said college, as they may judge necessary, and to make such by-laws, rules and regulations for the government of said college, and the promotion of education therein, as in their opinion may be expedient or necessary; *Provided*, such by-laws, rules and regulations are not inconsistent with the constitution and laws of the United States, or of this state.

4. *Be it enacted*, That upon the death, removal out of the county in which he resides, or resignation of any of the said trustees, the vacancy thereby occasioned, shall be supplied, by the remaining trustees appointing some other person, a resident of the same county, in which the one deceased, resigned or removed, resided; which appointment shall remain until the expiration of the next session of the General Assembly; within which time, the General Assembly shall supply such vacancy.

5. *Be it enacted*, That the said trustees shall have two meetings of their board in each year, at the place where said college is established, to commence on the first Thursday of April, and the first Thursday of October, in each year; and at either of said sessions, the board may adjourn to any day they may judge expedient; and when, in the opinion of the president and any two trustees of said college, a called session may be necessary, they may call the same. And at any stated session, the board of trustees shall have power to remove the president, professors, or any other officer of said college; and to fix and regulate their respective salaries. And the president and professors of said college, with the advice and consent of a majority of the board, shall have full power and authority, at any stated session of the said board, to confer on any student in said college, or any other person they may think proper, the degrees of Bachelor of Arts, Master of Arts, or any other degree known and used in any college or university, in any of the United States. At every meeting of the board of trustees, when there is a president of the college present, he shall be president of the board, but shall in no wise have a vote, when there is no president present, the board may appoint one of their own body to act as president.

6. *Be it enacted*, That each of said trustees, before acting in his appointment, shall before some judge or justice of the peace, take an oath, faithfully, honestly and impartially to discharge the duties of his said appointment; and that in all votes by him to be given as a trustee of said college, he will so vote, as in his judgment will best promote the interest of said college, and education therein.

7. *Be it enacted*, That said trustees shall have full power to sell, exchange, assign, transfer or convey any of the real or personal estate of said college by deed or otherwise, except the proceeds of the sales of one moiety of said one hundred thousand acres of land, with which the said college is endowed by this act, at any stated session of said trustees, provided a majority of the acting trustees shall be privy to, and join in the same. And said trustees, at their first stated meeting, or at some adjournment of the same, shall appoint one of their own body, secretary; and one other of their own body, treasurer; and said treasurer before entering on the duties of office, shall enter into bond, with approved security, in the

sum of one hundred thousand dollars, to the governor for the time being, and his successors in office, conditioned for the safe keeping, paying, settling and accounting for all moneys by him received, on account of said college.

8. *Be it enacted*, That said college be established on ten acres of land, within two miles of Knoxville, conveyed in trust, for the use of said college, by Moses White, at a place called the Rocky or Poplar Spring.

[Chapter 64 of the Laws of Tennessee for the year 1807. Passed October 26, 1807. Reprinted, as above, in Vol. 1 of Scott's Laws of the State of Tennessee, at p. 1047.]

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## APPENDIX F.

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AN ACT supplementary to an Act, entitled, "An act to establish a College in East Tennessee."

1. *Be it enacted by the General Assembly of the State of Tennessee*, That the following persons hereinafter named, be, and they are hereby appointed trustees of East Tennessee college; twenty-three of whom are appointed amongst the different counties in East Tennessee, according to the present ratio of representation, and the remaining seven in the country adjacent to said college, for the purpose of conveniently attending to, and conducting the ordinary affairs and business of said college, that is to say, in the county of Hawkins, Richard Mitchell and Andrew Galbreath; in the county of Sullivan, John Rhea and James King; in the county of Greene, Augustine P. Fore and John Gass; in the county of Washington, Matthew Stephenson and John Kennedy; in the county of Carter, Geo. Duffield; in the county of Jefferson, James Rice (Reese) and Joseph Hamilton; in the county of Grainger, John Cocke and Major Lea; in the county of Cocke, Alexander Smith; in the county of Sevier, Hopkins Lacy; in the county of Blount, the Reverend Joseph B. Lapsly and Doctor Robert Gant; in the county of Claiborne, William Graham; in the county of Anderson, Arthur Crozier; in the county of Roane, Thomas I. Vandyke; in the county of Knox, Geo. W. Campbell, John Sevier and Thomas Emmerson. And John Crozier, John Williams, Archibald Roane, Francis A. Ramsey, David Deaderick, George Doherty and John Lowry, merchant, being the additional number, to complete the number of thirty, required by said act, to which this is a supplement, to be appointed; and that the above named trustees, are hereby vested with as full power and authority and with all the privileges intended by said act to be vested in the trustees of East Tennessee college.

2. *Be it enacted*, That John Russell, James Park, Josiah Nichol,

Edward Douglass, John Overton and William Tate, be, and they are hereby appointed commissioners to superintend the management of the fund, appropriated by the act of the Congress of the United States, for the support of said college and for the support of Cumberland college, heretofore established in West Tennessee, on pursuance of said act of Congress; and said commissioners or a majority of them, are hereby authorized and empowered to receive from time to time, from the treasurer of the districts of Washington and Hamilton, all such monies as shall be paid into the hands of said treasurer, arising from the sale of one hundred thousand acres of land, lying on the south side of French Broad and Holston rivers, between the rivers Big Pigeon and Tennessee heretofore directed to be laid off, and appropriated for the use of two colleges in this state, one in East and the other in West Tennessee, by an act of the Congress of the United States. And when said commissioners or a majority of them shall have received said monies or any part or portion thereof, it shall be their duty, and they, or a majority of them, are hereby authorized and empowered, from time to time, to purchase the capital stock, or some share or shares of the capital stock of some reputable bank or banking association, in the United States, to the amount of such money by them received; and when any dividend or share of profits of such bank or banking association, shall be declared and become payable, the said commissioners, or a majority of them, shall receive the same, and pay over the same in equal moieties and half parts, to the trustees of East Tennessee college, or to their treasurer, for the use of said college, and to the trustees of Cumberland college, or to their treasurer for the use of said Cumberland college; *Provided always*, that whenever said commissioners or a majority of them, shall have purchased any capital stock or share or shares of the capital stock of any bank, they shall cause the transfer of such stock to be made to said commissioners, expressing in such transfer that the same is for the use of East Tennessee college, and Cumberland college; and said commissioners shall not be at liberty to sell or transfer said stock afterwards, unless specially authorized by the General Assembly of this state.

3. *Be it enacted*, That the trustees of said college of East Tennessee, shall be at liberty to carry on or cause to be carried on and conducted, the business of said college, and the instruction of youth, to be educated at said college, at the place and in the buildings now known by the name of Blount college, until suitable buildings shall have been prepared, at the place designated and laid out for the establishment of said East Tennessee college, and until the trustees of East Tennessee college shall take upon themselves to discharge the duties of said appointment, and hold their

first meeting, it shall be lawful for the trustees of Blount college, to carry on and conduct the business of said college, in the same manner as heretofore.

And, whereas, the trustees of Blount college have agreed, by a resolution by them unanimously adopted, on the twenty-ninth day of September, one thousand eight hundred and seven, that, provided this General Assembly should establish the college for East Tennessee, within two miles of Knoxville, the funds of Blount college might be incorporated with the funds of the college so to be established; and that the act incorporating said trustees of Blount college, might be repealed, except so far as might be necessary to enable said trustees to collect the monies due to said college, and authorize the instruction of youth and the other business of said college, to be carried on as heretofore, until the trustees of such new instituted college, shall be prepared to commence the business of tuition. And, whereas, this General Assembly has established East Tennessee college within two miles of Knoxville, whereby said trustees of Blount college are bound to incorporate the funds of Blount college with the funds of East Tennessee college; therefore,

4. *Be it enacted*, That the funds of Blount college shall be, and they are hereby declared to be incorporated with the funds of East Tennessee college, and made a part of the same. And the trustees of East Tennessee college, are hereby authorized and empowered to demand and receive from the trustees of Blount college, all the funds and effects of said college, of whatever nature and description; and said trustees of Blount college, are hereby authorized and required to pay and deliver up to the trustees of East Tennessee college aforesaid, on demand, after the first meeting of said trustees, all monies, goods, chattels and effects of whatever nature or description, belonging to Blount college in the hands of said trustees, or held in trust by any person or persons, for the use of said college, by deed, to convey to said trustees of East Tennessee college and their successors in office forever, all lands, tenements and hereditaments, belonging to or appertaining to said college; and said trustees last mentioned, shall and may use and dispose of the same, in like manner, as they may use and dispose of any other property belonging to said college of East Tennessee: *Provided*, that nothing contained in this section shall invalidate any provision contained in the third section of this act.

5. *Be it enacted*, That an act entitled "An act to establish a college in the vicinity of Knoxville, by the name of Blount college," be and the same is hereby repealed: *Provided*, that the trustees of said college shall not be disabled or debarred from the collection of any debt or debts due and owing to said college, or to the trustees of said college, for the use of the same: *And provided further*, that noth-

ing contained in this section, shall effect or avoid any provision contained in the third section of this act.

[Chapter 78 of the Laws of the State of Tennessee for the year 1807. Passed December 3, 1807. Reprinted, as above, in Vol. 1 of Scott's Laws of the State of Tennessee, at p. 1059.]

## APPENDIX G.

AN ACT donating Public Lands to the several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be granted to the several States, for the purposes herein mentioned, an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each senator and representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: *Provided,* That no mineral lands shall be selected or purchased under the provisions of this act.

SEC. 2. *And be it further enacted,* That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections, not less than one-quarter of a section; and whenever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said state shall be entitled shall be selected from such lands within the limits of such state, and the Secretary of the Interior is hereby directed to issue to each of the states in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said state may be entitled under the provisions of this act, land-scrip to the amount in acres for the deficiency of its distributive share: said scrip to be sold by said states and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever: *Provided,* That in no case shall any state to which land-scrip may thus be issued be allowed to locate the same within the limits of any other state, or of any territory of the United States, but their assignees may thus locate said land-scrip upon any of the unappropriated lands of the United States subject to sale or private entry at one dollar and twenty-five cents, or less, per acre: *And provided, further,* That not more than one million acres shall be located by such assignees in any one of the states: *And provided, further,* That no such location shall be made before one year from the passage of this act.

SEC. 3. *And be it further enacted,* That all the expenses of man-

agement, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said states, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purpose hereinafter mentioned.

SEC. 4. *And be it further enacted,* That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sale of land-scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the States, or some other safe stocks, yielding not less than 5 per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this act,) and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

SEC. 5. *And be it further enacted,* That the grant of land and land-scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several states shall be signified by legislative acts:

*First.*—If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution, to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding ten per centum upon the amount received by any state under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective legislatures of said states.

*Second.*—No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

*Third.*—Any State which may take or claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such State shall cease; and said state shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the state shall be valid.

*Fourth.*—An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their costs and results, and such other matters, including state, industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the secretary of the Interior.

*Fifth.*—When lands shall be selected from those which have been raised to double the minimum price, in consequence of railroad grants, they shall be computed to the States at the maximum price, and the number of acres proportionally diminished.

*Sixth.*—No State, while in a condition of rebellion or insurrection against the government of the United States, shall be entitled to the benefit of this act.

*Seventh.*—No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof, by its legislature, within two years from the date of its approval by the President.

SEC. 6. *And be it further enacted,* That land-scrip issued under the provisions of this act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three.

SEC. 7. *And be it further enacted,* That the land officers shall receive the same fees for locating land-scrip issued under the provisions of this act as is now allowed for the location of military bounty land warrants under existing laws; *Provided,* their maximum compensation shall not be thereby increased.

SEC. 8. *And be it further enacted,* That the Governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole amount shall be disposed of, the amount received for the same and what appropriation has been made of the proceeds.

Approved July 2, 1862.

(The above act is chapter 130 of the Acts of 37th Congress, Second Session, approved July 2, 1862; 12 United States Statutes at Large, p. 503.)

## APPENDIX H.

AN ACT to establish the Tennessee Agricultural College.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the proceeds of the sale of the Agricultural Scrip, appropriated by Congress for the establishment of an institution of learning, devoted to agriculture and the mechanic arts, be, and are hereby appropriated to the University of East Tennessee, upon the restrictions and conditions herein mentioned.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Trustees of said University, to establish an Agricultural College, so as to strictly conform with the Congressional enactment making the appropriation.

SEC. 3. *Be it further enacted,* That the fund hereby appropriated, shall be used only according to the terms of the Congressional enactment making the appropriation to the State.

SEC. 4. *Be it further enacted,* That as soon as the Trustees of said University shall have completed buildings for the accommodation of two hundred and seventy-five students, and shall have furnished the same with appropriate school furniture; and shall have provided suitable lands, not less in extent than two hundred acres, so that the whole property shall be worth, at a fair estimation of values, not less than one hundred and twenty-five thousand dollars, it shall be lawful for the Governor of the State to issue to the Trustees of said University, the bonds of the State in which the proceeds of the sale of the Agricultural Scrip have been invested.

SEC. 5. *Be it further enacted,* That the Secretary of State shall register the number and denominations of the bonds issued to the Trustees of said University, and shall also cause the character of the issue to be indelibly printed upon the bonds, and shall retain a file of said numbers and denominations in his office.

SEC. 6. *Be it further enacted,* That three students from each county in the State of Tennessee, shall at all times be entitled to receive free tuition in said College; said students to be nominated by the several Representatives to the Legislature from each county in the State, and preference being given; first, to the children of deceased Federal soldiers; second, to children of those who lost their lives on account of their loyalty; and third, to those who excel in public schools; it being understood that in all cases, prior claims shall be given to those whose circumstances especially require it.

SEC. 7. *Be it further enacted,* That the profits arising from crops on the agricultural farm, shall be annually applied by the Board of

Trustees toward paying the necessary expenses of students who are in indigent circumstances; and the Trustees are required to carry on a farm under such regulations as they may prescribe, and require all students who are physically able, to labor on said farm, but not exceeding two hours each day, except in the way of punishment, should the Trustees or Faculty adopt such system of correction of the pupils.

SEC. 8. *Be it further enacted*, That the Governor of the State, the Secretary of State, and the State Superintendent of Public Instruction, shall be ex-officio members of the Board of Trustees of said University.

SEC. 9. *Be it further enacted*, That the Board of Trustees of said University shall deposit with the Secretary of State, their bond, made payable to the State of Tennessee, with security, approved by the Governor of the State, and the Comptroller of the State, in double the amount of the issue of said bonds to the Trustees of said University, said bond to contain all the details of this act, and the Congressional enactment making the appropriation, and to bind said Trustees to carry them into effect—all and singly.

SEC. 10. *Be it further enacted*, That the Board of Trustees of the East Tennessee University, receiving its foundation and endowments by the munificence of the United States Government, and that of the State of Tennessee, shall always foster, encourage, and inculcate loyalty to both the State and National Governments, as well in the general administration of the Institution, as in the discipline of the pupils; nor shall the University be controlled in the interest of any particular sect or religious denomination whatever.

SEC. 11. *Be it further enacted*, That three Trustees from Middle, and three from West Tennessee, be added to the directory of the institution; and that William Bosson, John Trimble, and Hon. Joshua B. Frierson, from Middle, and Isaac Roach, David A. Nunn, and Martin T. Ryder, from West Tennessee, be, and are hereby, appointed said Trustees.

SEC. 12. *Be it further enacted*, That the Trustees of this Institution shall make a report to each biennial session of the Legislature, giving the number of students, together with a detailed statement of the workings of the Institution, and of receipts and expenditures; and shall, at the same time, secure the bond required to be given in section 9 of this Act, and according to the requirements of said ninth section.

SEC. 13. *Be it further enacted*, That no citizen of this State, otherwise qualified, shall be excluded from the privileges of said University, by reason of his race or color; provided, that it shall be the duty of the Trustees of said University, to make such provisions as may be necessary for the separate accommodation or

instruction of any persons of color, who may be entitled to admission.

SEC. 14. *Be it further enacted*, That the Legislature reserves the right to control and manage said fund by whatever legislation may be deemed necessary for its protection and safety; provided, no such legislation shall extend to the removal of said fund from the University of East Tennessee, so long as it shall comply with and observe the requirements of the Act of Congress donating said fund.

SEC. 15. *Be it further enacted*, That this Act shall take effect from and after its passage.

F. S. RICHARDS,

*Speaker of the House of Representatives.*

D. W. C. SENTER,

*Speaker of the Senate.*

Passed January 16, 1869.

(*The above Act is Chap. XII, Acts of 1868-69, p. 12.*)

*Note.*—Sec. 6 of the above Act, from words “and preference,” “loyalty,” inclusive, are repealed by Act of December 5th, 1871, (Acts of 1871, chap. 57, p. 51.)

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## APPENDIX I.

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### NOTES ON THE ILLUSTRATIONS.

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**Frontispiece.—View of the University, 1893.**—From photographs taken from south side of the Tennessee river in 1893, by Prof. F. Lamson-Scribner and Prof. S. W. McCallie, the upper view being taken after a heavy snow storm in the winter.

**Graveyard of the First Presbyterian Church, Knoxville.**—From photograph taken from northwest corner, in 1894. This was the first church established in Knoxville. In the graveyard are buried many of the early Trustees of the University, and persons prominent in the history of Knoxville; among others, Hugh Lawson White, the founder of Knoxville; the Rev. Samuel Carrick, whose grave-stone is photographed in the upper left hand corner; and Governor William Blount, whose grave is photographed in the upper right hand corner. By a typographical error on page 39, *supra*, the inscription upon Mr. Carrick's grave is stated as Samuel C. Z. R. Carrick. There should be no periods after the letters C and Z.

**Portrait of Rev. Charles Coffin, D. D.**—From a photograph obtained through the courtesy of Colonel Moses White from Mr. Hector Coffin, a descendant of the President.

**Portrait of Joseph Estabrook, A. M.**—From an oil painting kindly loaned by Hon. Perez Dickinson.

**Portrait of Rev. George Cook, A. M.**—From a wood cut obtained through the courtesy of Mrs. S. Barton.

**View of the University, 1867.**—From a copper plate, first appearing in the University Catalogue of 1867, but probably made sometime before the war.

**Portrait of Hon. W. B. Reese, L. L. D.**—From a photograph loaned through the courtesy of his daughter-in-law, Mrs. W. B. Reese.

**View of the University, 1863.**—From a photograph taken by Mr. Smiley, from Fort Sanders, northwest of the University.

**View of the University, 1865.**—From an old photograph taken from the south side of the Tennessee river, secured through the courtesy of Mr. Z. T. Barry. The photograph is in four parts, making a very interesting picture of Knoxville at that date. Only the portion showing the East Tennessee University is reproduced.

**Portrait of Rev. William D. Carnes, A. M.**—From a crayon portrait owned by the University.

**Portrait of Rev. Thomas W. Humes, A. M., S. T. D.**—From a crayon portrait owned by the University, made by Mr. Lloyd Branson.

**View of the University, 1877.**—From a wood cut, the view being taken from the northeast corner of the University grounds.

**View of the University, 1887.**—From a photograph taken from the north side, showing the older college buildings.

**View Looking South from the University.**—From a photograph, 1892. The large building in the centre contains the agricultural department, museums of geology, natural history, etc., with the offices, library and laboratories of the agricultural experiment station. To the left is the house of the President, and on the right can be seen the green house; in the back ground the Tennessee river and hills beyond. The mountains, which can be seen on a clear day, are not visible in this picture.

**Agricultural Building.**—From a photograph, taken in 1892, giving a nearer view of the agricultural experiment station building, which appears in the center of the above mentioned "View looking south from the University."

**Y. M. C. A. Building, East View.**—From a photograph taken from the east side, about 1891. This contains the association gymnasium, chapel, reading room, ladies' auxiliary room, secretary's office, baths, lockers, den and student's room.

**Science Hall and Y. M. C. A. Building.**—From photographs taken in 1892. The view of Science Hall is taken from the southeast and rear, the Y. M. C. A. building from the east side.

**Mechanical Building.**—From a photograph, 1887.

**Portrait of Colonel Moses White.**—From a photograph.

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## APPENDIX J.

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### CHRONOLOGICAL LIST OF PRESIDENTS.

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Rev. Samuel Carrick, A. M. . . . .	{ . . . Blount College, 1794-1807 East Tenn. College, 1808-1809
Rev. David Sherman, A. M. . . . .	East Tenn. College, 1820-1825
Rev. Charles Coffin, D. D. . . . .	East Tenn. College, 1827-1832
Rev. James H. Piper, A. M. . . . .	East Tenn. College, 1833-1834
Joseph Estabrook, A. M. . . . .	{ East Tenn. College, 1834-1840 East Tenn. Univ., 1840-1850
Hon. W. B. Reese, L. L. D. . . . .	East Tenn. Univ., 1850-1853
Rev. George Cook, A. M. . . . .	East Tenn. Univ., 1853-1857
Rev. William D. Carnes, A. M. . . . .	East Tenn. Univ., 1858-1860
Rev. J. J. Ridley, D. D. . . . .	East Tenn. Univ., 1860-1862
Rev. Thos. W. Humes, A.M., S.T.D. . . . .	{ East Tenn. Univ., 1865-1879 University of Tenn., 1879-1883
Charles W. Dabney, Ph. D. . . . .	University of Tenn., 1887-

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**NOTE.**—For autobiographical details as to the various Presidents, see Colonel White's Early History of the University, and Prof. Karns' chapter on the University of Tennessee in Meriam's "Higher Education in Tennessee."

In the interval from 1883 to 1887 no President was elected, this position being filled by a Chairman of the Faculty. Professors Rodes Massie, Eben Alexander and S. B. Crawford successively filled this position. (See Prof. Karns' chapter on the University of Tennessee, cited, *supra*.)









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